

1998

## **What We're Not Telling Law Students -- and Lawyers -- That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession From Its Roots**

Lawrence S. Krieger

Follow this and additional works at: <https://ir.law.fsu.edu/articles>



Part of the Legal Education Commons, and the Legal Profession Commons

---

### **Recommended Citation**

Lawrence S. Krieger, *What We're Not Telling Law Students -- and Lawyers -- That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession From Its Roots*, 13 *J. LAW & HEALTH* 1 (1998) 1 (1998),

Available at: <https://ir.law.fsu.edu/articles/101>

This Article is brought to you for free and open access by Scholarship Repository. It has been accepted for inclusion in Scholarly Publications by an authorized administrator of Scholarship Repository. For more information, please contact [efarrell@law.fsu.edu](mailto:efarrell@law.fsu.edu).

1998

# What We're Not Telling Law Students - And Lawyers - That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots

Lawrence S. Krieger  
*Florida State University College of Law*

Follow this and additional works at: <http://engagedscholarship.csuohio.edu/jlh>

 Part of the [Legal Education Commons](#), and the [Legal Profession Commons](#)

## Recommended Citation

Lawrence S. Krieger, What We're Not Telling Law Students - And Lawyers - That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots, 13 J.L. & Health 1 (1998-1999)

This Article is brought to you for free and open access by the Law Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Journal of Law and Health by an authorized administrator of EngagedScholarship@CSU. For more information, please contact [library.es@csuohio.edu](mailto:library.es@csuohio.edu).

WHAT WE'RE NOT TELLING LAW STUDENTS—AND  
LAWYERS<sup>1</sup>—THAT THEY REALLY NEED TO KNOW: SOME  
THOUGHTS-IN-ACTION TOWARD REVITALIZING THE  
PROFESSION FROM ITS ROOTS

LAWRENCE S. KRIEGER<sup>2</sup>

I. INTRODUCTION . . . . .	3
II. PART I: HOW LIFE AS A LAWYER CAN WORK WELL . . . . .	8
A. <i>Law Students (and Lawyers) Really Need to Know that their Aspirations for Honors and High Achievement are Valuable Only in the Context of a Balanced, Happy Life . . . . .</i>	8
B. <i>Law Students (and Lawyers) Really Need to Know that they Can Have Good Lives as Lawyers if They Act According to Their Conscience, Their Deep Personal Values, and their Ideals . . . . .</i>	9
C. <i>Law Students (and Lawyers) Really Need to Know that they Cannot Have Good Lives as Lawyers if they do not Act According to their Conscience, Deep Personal Values, and Ideals . . . . .</i>	10
D. <i>Law Students Really Need to Know that they Do Not Have to be at the Top of the Class, or on Law Review, to Become Successful, Satisfied Lawyers . . . . .</i>	11

---

<sup>1</sup>Although the primary perspective of this article is that of legal education, I generally use examples from the education and practice settings interchangeably because the difficulties and quality of distress experienced by lawyers and law students appear fundamentally similar. See G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 240 [hereinafter Benjamin]. See also Susan Daicoff, *Lawyer Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1378 (1997) [hereinafter Daicoff].

<sup>2</sup>The author is Clinical Professor of Law at Florida State University College of Law. His previous experience includes several years each as a criminal prosecutor, securities enforcement attorney, and Chief Trial Counsel for the State of Florida, Department of Banking and Finance. He has taught in the area of personal development and stress management for 25 years, and is Vice-Chair of the Quality of Life/Stress Management Committee of the Florida Bar.

E.	<i>Law Students Really Need to Know that, as Attorneys, their Best Personal Attributes are More Important than their Best Skills or Performances</i> . . . . .	12
F.	<i>Law Students Really Need to Know that it is Possible to Consistently Feel Good About Themselves as Lawyers, and Have the Respect of Their Peers, Regardless of the Outcome of their Cases . . . and they Need to Know How</i> . . . . .	14
G.	<i>Law Students (and Lawyers) Really Need to be Encouraged to Define Success in Terms that are Personally Meaningful, Achievable, and Which Include the Experience of a Full, Healthy, and Satisfying Life</i> . . . . .	15
H.	<i>Law Students (and Lawyers) Really Need to Know that Good Appearances do not Necessarily Indicate a Good Life</i> . . . . .	16
I.	<i>Law Students (and Lawyers) Really Need to Know that their Level of Professionalism will Probably Improve if they Live a Full, Satisfying Life</i> . . . . .	16
J.	<i>Law Students (and Lawyers) Really Need to Know that a Respectful, Caring Attitude and Consistent Enjoyment of Life are Signs of a Mature, Healthy Person</i> . . . . .	17
III.	<b>PART II: WHY LAW STUDENTS (AND LAWYERS) SURRENDER THEIR LIFE SATISFACTION AND PROFESSIONAL IDEALS</b> . . . . .	17
A.	<i>Seeking the Fundamental Error: Internal or External Focus?</i> . . . . .	18
B.	<i>Learning from a Cricket</i> . . . . .	20
C.	<i>Life Satisfaction Requires Psychological Maturity</i> . . . . .	20
D.	<i>The Inhibition of Attorney Satisfaction and Sense of Self</i> . . . . .	23
E.	<i>What One Feels to be Right</i> . . . . .	26
F.	<i>Competition, The Need for Control, The Illusion of Control</i> . . . . .	27
G.	<i>Stress is also an Internal Matter</i> . . . . .	28
H.	<i>Caring and Stress</i> . . . . .	29

I.	<i>Are Legal Education and Law Practice Addictive Processes?</i> . . . . .	30
J.	<i>The Self-Actualizing Lawyer: The Relationship Between Personal Satisfaction and Professionalism</i> . . . . .	34
IV.	PART III: PRACTICAL USE OF THE MATERIAL . . . . .	36
A.	<i>Using the Material with Law Students</i> . . . . .	37
1.	Current Applications—Simulation and Externship Perspectives . . . . .	37
2.	Proposed Applications Across the Curriculum . . . . .	41
B.	<i>Using the Material with Attorneys—the Components of an Effective Approach</i> . . . . .	43
V.	CONCLUSION . . . . .	45

*I have long been concerned with the inability of legal education to consistently graduate lawyers who are happy, balanced, and who would naturally aspire to professionalism in its most exalted sense. Because the collective character and conscience of lawyers constitute the roots of the profession, and because proposals for systemic change in law schools or law firms, while laudable, are difficult to implement, I believe the most workable approaches to improving the profession will focus on the level of the internal motivations and attitudes of individual students and attorneys. I have designed and repeatedly amended my teaching for some years with these goals in mind, with increasingly positive results.*

#### I. INTRODUCTION

The current state of the legal profession confirms my personal lessons as a law student, litigation attorney, and clinical law teacher:<sup>3</sup> students are not told in law school what they really need to know to have meaningful and healthful lives as lawyers. Unfortunately and to the contrary, it also seems to me that some of the things many of us do learn in law school—largely from the culture rather than the curriculum—affirmatively contribute to the many problems facing the profession and its practitioners today.<sup>4</sup>

It is hardly debatable any longer that the profession and its practitioners are suffering broadly from many serious problems. Indeed, studies have

---

<sup>3</sup>*Id.*

<sup>4</sup>These matters are discussed throughout this article. Benjamin, *supra* note 1; Connie J.A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH 1, 2 (1995) [hereinafter Beck]; Rebecca M. Nerision, *Is Law Hazardous to Your Health? The Depressing Nature of the Law*, 22 B. LEADER 14, 15 (1998).

concluded that lawyers and law students are much more likely than the general population to experience emotional distress, depression, anxiety, addictions, and other related mental, physical, and social problems.<sup>5</sup> These studies confirm the common experience of student distress during law school, the negative public perception of lawyers, and simple observation of attorney behavior: lawyers as a group tend to be stressed and relatively unhappy people.<sup>6</sup>

A particularly striking study by psychologists Beck, Sales, and Benjamin found that, on a variety of psychological scales, from 20% to 35% of attorneys are "clinically distressed" (which the authors define as "in need of professional help").<sup>7</sup> These levels of distress are found in only about 2% of the general population,<sup>8</sup> and indicate that a very large number of attorneys are indeed living the appearance of a good life but the reality of misery.

Many commentators call for law schools to address these matters directly.<sup>9</sup> This article offers a unifying, and hopefully clarifying, theory on many of these problems, my approach to presenting and reinforcing this theory for students and attorneys, and early indications that this approach is effective.

Since becoming a law teacher, I have been struck by the number of law students I see exhibiting tension and personal malaise reminiscent of that which I, and many others I have known, have experienced as students and attorneys. After a few years of observing the particularly persistent performance anxiety in my classes, it struck me that Abraham Maslow's "Hierarchy of Human Needs,"<sup>10</sup> commonly taught in undergraduate

---

<sup>5</sup>A recent study found lawyers to have the highest rate of major depressive disorder among 104 occupational groups. William Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079 (1990). For a thorough review of relevant studies, see Daicoff, *supra* note 1, at 1340; Benjamin, *supra* note 1, at 226; Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65 & n.1 (1985); Beck, *supra* note 4; Heidi L. McNeil, *Problems Identified: The Bar Surveys*, in LIFE, LAW, AND THE PURSUIT OF BALANCE 9, 10-11 (Jeffrey R. Simmons et al. eds., 2d ed., 1997 [hereinafter McNeil]). See generally Deborah L. Rhode, *The Professionalism Problem*, 39 WM. & MARY L. REV. 283 (1998).

<sup>6</sup>As described in Part III of this article, students at clinical field placements also readily notice and reflect on examples of unprofessional behavior among attorneys and judges.

<sup>7</sup>Beck, *supra* note 4, at 49.

<sup>8</sup>*Id.* at 23.

<sup>9</sup>See James J. Alfini & Joseph N. Van Vooren, *Is There a Solution to the Problem of Lawyer Stress? The Law School Perspective*, 10 J.L. & HEALTH 61 (1996); Peter G. Glenn, *Some Thoughts About Developing Constructive Approaches to Lawyer and Law Student Distress*, 10 J.L. & HEALTH 69 (1996); and Geoffrey C. Hazard, Jr., *Commentary: Policy Implications*, 10 J.L. & HEALTH 79 (1996); Susan S. Locke, *Lawyer Distress: A Comment*, 10 J. L. & HEALTH 87 (1996). See generally SOL M. LINOWITZ, *THE BETRAYED PROFESSION* 118-125 (1994) [hereinafter LINOWITZ]; Beck, *supra* note 4, at 3.

<sup>10</sup>Maslow described a hierarchy of "lower" human needs, including those for survival, security, love, and competence, which must be met sequentially before one can experience genuine self-esteem and the fulfilled, psychologically matured state of "self-actualization". ABRAHAM H. MASLOW, *MOTIVATION AND PERSONALITY* 39-46 (2d ed.



psychology courses, might explain the tension I was seeing. I also began to see that the Hierarchy, in combination with basic concepts from addiction theory, might help us understand many of the current problems in the profession. Could the dissatisfaction, distress, and lack of decent behavior among attorneys be understood, in essence, as manifestations of our collective inability to grow beyond the immature levels of psychological functioning which Maslow labeled "lower needs" in his motivation theory?<sup>11</sup>

I sensed that this analytical framework could take my classes beyond the sense of lecturing and moralizing that attends much of our efforts to encourage professionalism, and prove practically useful to students and lawyers for a variety of reasons. First, it describes the natural process of human growth toward fulfillment—precisely the quality apparently most lacking in student and attorney life. Second, the theory can explain concerns of immediate relevance to most listeners—including anxiety, incivility, excessive competitiveness, and personal dissatisfaction—as reflections of immature levels of human development. I thought that the very nature of such a perspective would motivate students and practitioners to disfavor these negative qualities (rather than accept them as inevitable concomitants of their association with the law) and to "grow up" into the mature states of adult life described by Maslow's work.<sup>12</sup>

Further study of Maslow's work brought another level of potential usefulness to my attention: his description of self-actualizing people—the healthiest and most mature subjects he could find—describes as well the highly professional attorneys we aspire to train or become. I began to emphasize in my work with students and lawyers this apparent synergy between high levels of fulfillment and the exalted human qualities characteristic of professionalism, in order to further convince listeners to move toward a more mature and balanced approach to their lives.

I intend this article to stimulate thinking among students, law teachers, and lawyers, and do not suggest that it represents either rigorous research or an authoritative viewpoint<sup>13</sup> on the many complex concerns that are discussed.

---

1970) [hereinafter MASLOW, MOTIVATION]. Various implications of this sequence of needs are discussed in Part II of this article.

<sup>11</sup>*Id.* at 57.

<sup>12</sup>The extraordinary aspect of Maslow's work was his insistence on studying the healthiest persons in order to discern the positive nature and limits of human potential. *Id.* at 150. Despite this break with the more accepted focus on psychological illness, Maslow was eventually elected president of the American Psychological Association.

<sup>13</sup>I have no pretensions as a psychologist or addictionologist, for example. However, my confidence in the material increases with continuing positive feedback from many presentations to lawyers, law teachers, and law students, some of whom have identified themselves as experienced professional psychologists. One law student-psychologist had used much of the same psychological framework in his training programs for corporations, and gave me comfort (unintended no doubt) by reflecting that he had found my presentation "boring" because of his familiarity with the subject matter.

However, I have worked with this approach in my classroom curriculum, my law school clinics, and numerous continuing education programs for lawyers. My impression after a few years of teaching with this perspective is straightforward: the more that I incorporate it, the better are the results.<sup>14</sup> It seems to help both students and lawyers make sense of the many problems they typically experience personally or observe in the classroom, courtroom, or law office. And as I had hoped, by providing an understanding of how satisfaction is actually derived from the process of living and working, the material has enabled many students to recognize potentially problematic attitudes, perspectives, and priorities, and to amend them constructively.<sup>15</sup>

There are important considerations that probably should have dampened my optimism by now. The foremost of these is Maslow's own recognition of the rarity of self-actualization in modern society.<sup>16</sup> But he and other leading humanistic psychologists<sup>17</sup> posit the very basis of human nature to be the drive to self-actualize, and I subscribe to this view. I therefore believe that consistent encouragement in this direction, particularly from a role model, combined with the innate desire to experience satisfaction, can lead many people to favor the more mature and adaptive attitudes and behaviors consistent with this psychological perspective. Student experiences thus far support that optimism.<sup>18</sup>

I have also been undissuaded by the common observation that law student distress results from the current lack of employment prospects for new graduates, or from the grading system at the college, or from other designated stressors in the current educational and professional environments. After all, my classmates and I were saying the same things in 1971, in a time of completely different hiring opportunities, at a school with a different grading system. Research indicates that even during the 1980's, the purported "Golden

---

<sup>14</sup>Lawyers attending continuing education have consistently expressed appreciation for the information, and commonly suggest that the seminars be longer. This supports my own impression, that continued attention to these points is necessary for most people to amend problematic attitudes. I discuss this further in Part III, "Using the Material With Attorneys. . . ."

<sup>15</sup>Examples of student reflections and reactions are offered in Part III of this article. It remains to be seen whether the healthier attitudes students are developing toward themselves and their clinical work can persist or even deepen as they move into their careers. I am optimistic about this.

<sup>16</sup>"I had to conclude that self-actualization of the sort I had found in my older subjects perhaps was not possible in our society for young, developing people." MASLOW, *MOTIVATION*, *supra* note 10, at 150. In later work Maslow modified his position somewhat by looking at self-actualization as a composite of qualities, and studying their incidence in society regardless of whether particular individuals had developed all of them sufficiently to be considered fully self-actualized. *Id.* at xx.

<sup>17</sup>*See, e.g.* CARL R. ROGERS, *ON BECOMING A PERSON: A THERAPIST'S VIEW OF PSYCHOTHERAPY* (1995).

<sup>18</sup>*See* discussion *infra* Part III; *supra* text accompanying note 15.



Age" of hiring for new law graduates, law student and lawyer distress was inordinately high.<sup>19</sup> Furthermore, there is the persistence of distress among lawyers,<sup>20</sup> who are no longer competing for grades or for their first job. It seems irresponsible for us, perhaps the most powerful and intelligent group in society, to be looking "elsewhere" for the causes of our personal and professional distress. Certainly circumstances contribute greatly to one's life situation, but one's attitudes, clarity of thinking, level of self-regard, and capacity for choice and action are more determinative of one's quality of life.<sup>21</sup> Of greater importance, an individual has the capacity to amend these personal factors, making them a practical starting point for initiating improvement.

Part I of this article sets forth a generally encouraging set of propositions about student and attorney life that I have found to be true.<sup>22</sup> If they are, law students and lawyers need to hear them repeatedly. They collectively represent an approach to life and law which, to the extent it is internalized, can increase life satisfaction, raise standards of professional behavior, and relieve many of the kinds of distress that law students and lawyers are prone to experience. Some students seem to bring much of this information with them to law school, and, based on their relatively pleasant, relaxed demeanor during their school years and after, do not lose sight of it. But many others either do not arrive so equipped, or are separated from their beliefs as their education proceeds.<sup>23</sup>

---

<sup>19</sup>Benjamin, *supra* note 1, at 226.

<sup>20</sup>*Supra* text accompanying note 5.

<sup>21</sup>One can perceive a pattern akin to "victim" thinking among us—we justify the literal surrender of our health or life quality based on our choice of environmental factors: competition for grades, tight job markets, greedy managing partners, high debts, demanding clients, high overhead, the cost of our life-style, the requirements of a "decent" retirement, etc. When do we decide to take responsibility for our own lives? This is the gist of the first of Steven Covey's recommended approaches to life—"Be proactive". STEPHEN R. COVEY, *THE 7 HABITS OF HIGHLY EFFECTIVE PEOPLE* 70-71 (1989) [hereinafter COVEY].

<sup>22</sup>The organization of this article presented me with something of a quandary. My anticipated content included a framework of practical propositions around which law students and lawyers might organize their professional endeavors, and somewhat denser psychological and addiction theory to support the "wisdom", and perhaps necessity, of heeding such propositions in order to maximize one's chances for a fulfilling life as a lawyer. Which material to place first? The propositions logically might best follow the theory that supports them. I chose, however, to place the propositions first; in part because I believe they may assist more readers, at least in the short term, and in part because I believe them to be founded essentially on common sense. I articulate them at all because they appear counterintuitive in the context of much of what goes on in legal education and law practice, and because ignoring them creates tremendous distress in our colleges and practice settings. The psychology and addiction theory follows the propositions as secondary support and explanation.

<sup>23</sup>Some of the factors particular to law study and practice which may contribute to the loss of healthy perspective and personal balance are discussed in Part II of this article.

## II. PART I: HOW LIFE AS A LAWYER CAN WORK WELL

Much of our discomfort is a byproduct of assumptions and attitudes commonly shared within the law school and attorney communities.<sup>24</sup> These assumptions revolve in significant part around the notions that only the "best" will reliably find success in their lives, and that performance and appearances are crucially important. Such beliefs undermine the ability to have satisfying and healthy lives as lawyers by generating stress and anxiety as baseline life experiences for many of us. They facilitate our disconnection from a sense of ourselves as inherently worthwhile people, and encourage us to ignore our personal needs, feelings, and conscience in favor of seemingly more "practical" matters (such as production, performance, income or image). The following propositions contradict such attitudes, and are embedded in my teaching approach for both students and lawyers. They represent much of the happier reality of life as a lawyer that I have learned.<sup>25</sup>

*A. Law Students (and Lawyers) Really Need to Know that their Aspirations for Honors and High Achievement are Valuable Only in the Context of a Balanced, Happy Life*

If one is not happy, what is the point?<sup>26</sup> As law students are preparing for their legal careers, we do not sufficiently encourage them to balance their drive for honors and recognition, either with respect for personal well-being or with trust that life will actually be fine for the many who do not place at "the top". The summit is a great place to be, and no one should misconstrue this message as encouragement to hang back and do less than one's best.<sup>27</sup> The precise and complex nature of the law demands hard work, but students should resist the impulse to sacrifice health, comfort, or balance in the pursuit of their goals. The common, unyielding devotion to excessive hours of work and study can persist

---

<sup>24</sup>Many of these assumptions and attitudes are also common in our wider society. It seems that they are more prevalent, or perhaps held more intensely, among law students and lawyers. See Benjamin, *supra* note 1, at 226.

<sup>25</sup>I would not suggest that these lessons were learned without significant travail.

<sup>26</sup>See Robert M. Fenner et al., *Three Perspectives of the Law: Advice to the Young Lawyer*, 31 CREIGHTON L. REV. 665, 673 (1998).

<sup>27</sup>There is a delicate line to be drawn about many of these points in order to achieve a proper balance. Detractors may claim that messages intended to decrease anxiety and help people implement healthy work limits or accept unfavorable outcomes gracefully, justify doing less than one's best work. In practice such misinterpretation has not been a problem. Students continue to work hard in class and in their clinical casework, and as their attitudes moderate to produce less tension and more balance, their performance seems to improve rather than suffer. Students typically report this improvement explicitly in their self-evaluations during the clinical semester. For discussions of the negative consequences of performance anxiety on lawyers and law students see Daicoff, *supra* note 1, at 1376 n.217; Benjamin, *supra* note 1, at 249.

as workaholicism and perfectionism after graduation.<sup>28</sup> The fact that so many lawyers and law students continue to walk, and even push their way, into abusive work environments, and stay there long enough to feel trapped by their life style, reveals the breadth of the problem.<sup>29</sup> Legal educators need to explicitly acknowledge the reality which is increasingly dawning on unhappy practitioners:<sup>30</sup> there is much more to a good life as a lawyer than constant achievement. Students must learn early to work toward their very best while keeping personal health, happiness and life balance as absolute priorities. Otherwise, giving up quality of life now may well become a lifelong mistake.

*B. Law Students (and Lawyers) Really Need to Know that They Can Have Good Lives as Lawyers if They Act According to Their Conscience, Their Deep Personal Values, and Their Ideals*

Many law students sense that, to deal effectively with legal issues, they are expected to silence their personal ethics in favor of analysis and "objectivity".<sup>31</sup> Analytical skills and substantive knowledge are important, but should not be used to supplant the remainder of one's personality. Only a whole person can be a whole (i.e., healthy and professional) lawyer.<sup>32</sup> Students exhibit relief when I tell them this. They need to hear it often from their teachers as an adjunct to their learning of substance and skills.

---

<sup>28</sup>Students with whom I have discussed this are convinced that their high loan balances mandate the sacrifice of their life quality, and that in *x* years when they make partner they will be able to start enjoying their life in a balanced way. I do not believe that people can surrender their souls for *x* years and then take them back on a given date, and observation of lawyers ten and twenty years past graduation confirms my belief. Hence my focus on revamping attitudes and instilling an internally-derived sense of self-worth in law students and lawyers.

<sup>29</sup>In this context Dean Kronman mentions the "confidence-sapping conformism of student culture". ANTHONY T. KRONMAN, *THE LOST LAWYER*, note 72, at 380 (1993) [hereinafter KRONMAN]. In my estimation this phenomenon is continuing relatively unabated, reflecting something of a "herd" mentality in law schools. Competition for every symbol of recognition is intense. Most often the prize for the self-imposed pressure is an interview, and eventually a job offer, with a high-paying, 70-hour-per-week law firm. See also Benjamin, *supra* note 1, at 226.

<sup>30</sup>For statistics on depression and dissatisfaction in practicing attorneys, see McNeil, *supra* note 5, at 10-11.

<sup>31</sup>Many law students, and law professors at a variety of colleges, have confirmed this to me. For a compelling account of the process of student depersonalization and loss of self at Harvard Law School, see *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027 (1998) [hereinafter *Making Docile Lawyers*].

<sup>32</sup>Professor Daniel Coquillette argues that the moral relativism of modern legal education and law practice is at the heart of much of the professionalism crisis, and advises: "It is a delusion of young, inexperienced lawyers to think that they can separate their personal from their professional lives and their personal from their professional morality. The current jargon refers to this dichotomy as "role-defined" ethics. It is true intellectual rubbish." Daniel R. Coquillette, *Professionalism: The Deep Theory*, 72 N.C. L. REV. 1271, 1272 (1994) [hereinafter Coquillette].

Many law students accept or assume that other important aspects of their subjective lives—including satisfying family and personal time, and intimacy with their emotions and other subjective qualities—are also to be subsumed to their study of law.<sup>33</sup> All of these assumptions ignore the seemingly obvious principle that life is an "inside-out" phenomenon,<sup>34</sup> and cannot be experienced positively if one ignores her conscience or denies other core elements of her humanity.<sup>35</sup>

*C. Law Students (and Lawyers) Really Need to Know that They Cannot Have Good Lives as Lawyers if They Do Not Act According to Their Conscience, Deep Personal Values, and Ideals*

When we discourage the appreciation and expression of subjective qualities such as values, feelings, and conscience, we undermine our potential for satisfaction by attenuating our connection with the very faculties that define human life.<sup>36</sup> No wonder life becomes less than a worthwhile experience for many lawyers! It is no coincidence that the common caricature of lawyers includes shallowness, greed, and dishonesty—qualities that manifest in a personal environment devoid of real meaning. And the high rate of addiction among lawyers,<sup>37</sup> *by definition*, reflects a loss of connection with our feelings and inner sense of self.<sup>38</sup>

A partial person simply cannot live a full life; I use "word games" to clarify this point. I often begin my presentations by listing the many pervasive problems in the profession and then reviewing specific aspects of the study and practice of law which encourage us to ignore basic internal qualities such as feelings and values.<sup>39</sup> I characterize (accurately, I believe) the plight of the profession as "demoralized," "dis-cour-aging," and "dis-heart-ening." I then ask people to notice that the root meanings of all these terms relate to loss of internal qualities of one's self—one's morals, one's "core," or one's heart. I suggest that the depressing feeling attending "demoralization" or "discouragement" can be

---

<sup>33</sup>See Daicoff, *supra* note 1, at 1381, 1415.

<sup>34</sup>Virtually all religions and classics teach this lesson in some form. This concept is at the heart of Steven Covey's popular works for effectiveness in business. COVEY, *supra* note 21, at 42-43.

<sup>35</sup>The importance of conscience in this context is discussed in Part II; see *infra* text accompanying notes 80-85.

<sup>36</sup>"You cannot be a bad person and a good lawyer, nor can you be a good person and a lawyer with sharp practices . . . We can't split ourselves down the middle." Coquillette, *supra* note 32, at 1272.

<sup>37</sup>Addictions, including workaholism and perfectionism as well as the commonly recognized substance addictions, are discussed in some detail in Part II of this article.

<sup>38</sup>See *infra* note 119-21.

<sup>39</sup>These potentially dehumanizing elements are discussed in some detail in Part II, *The Inhibition of Attorney Satisfaction and Sense of Self*. See also Daicoff, *supra* note 1, at 1401!



understood as a component of suppression of our subjective faculties.<sup>40</sup> Similarly, the loss of a lawyer's "integrity" literally results in her *dis-integration*, which alludes to the loss of key parts of her person,<sup>41</sup> while loss of one's "character" is defined as loss of the "defining quality" of one's self.<sup>42</sup> It is crucial that any tendency to become disassociated from our defining internal qualities be recognized and moderated to produce health, satisfaction, and professional behavior as an attorney.

It obviously remains for law students and lawyers to use good sense in determining when and where to express their distinctly subjective qualities. One would not encourage appellate arguments based on intuition rather than precedent and analysis, for example; but the fact that one may find inappropriate the expression of deeper faculties of one's self in a particular classroom or courtroom setting does not mean that the faculties themselves are inappropriate. Part III of this article suggests ways to remain well-connected to the more subjective personal qualities often discouraged or minimized by the study or practice of law.

*D. Law Students and Lawyers Really Need to Know that They Do Not Have to be at the Top of the Class, or on Law Review, to Become Successful, Satisfied Lawyers*

I recently asked our entire first year class how many wanted to be in the top 10% of the class. The affirmative response from 90% of the class indicates the potential problem: if this *want* is perceived as a *need*, most of the class must eventually see themselves as failures. The only variables will be which members of the group will constitute the failing majority, and which few will manage to "make it". A "law-of-the-jungle" mentality is encouraged by this pervasive misperception of need, potentially creating a need to defeat, rather than support, classmates and peers. This attitude can follow graduates into the practice of law, where participation in an adversarial process is misconstrued as an imperative to prevail. Years of experience and observation tell me instead that the attorney's internal process, rather than the outcome of specific cases, is the more likely determinant of her personal satisfaction and professional reputation.<sup>43</sup>

---

<sup>40</sup>I also find it helpful to point out the similarity between the words *suppression* and *depression*, and to contrast the word *expression*—the flowing out of one's inner qualities—as having a contrary meaning and producing a sense of energy quite distinct from the feeling of depression as well. While I suggest that the excessive incidence of depression among lawyers and law students collectively correlates with our tendency to suppress personal needs, values, and feelings, it is very important for individuals experiencing depression to seek professional help immediately. *Id.* at 1401-02; see also Howard Lesnick, *Why Pro Bono in Law Schools?* 13 LAW & INEQ. J. 25, 28 (1994).

<sup>41</sup>WEBSTER'S NEW WORLD DICTIONARY 404-05 (2d ed. 1980).

<sup>42</sup>*Id.* at 239.

<sup>43</sup>This point is clarified in the discussion of points E and F that follow, and in Part II, *Competition, the Need for Control, the Illusion of Control*. Of course, it would be nice to always win *and* always feel "right" about what one was doing. One has much greater

Students tell me that they resent "institutional" requirements that they compete against each other for limited recognition opportunities. Administrators and faculty reply that the need to distinguish student "quality" is imposed on colleges by hiring firms. Neither view is dispositive, and in my view competition need not be defended. Competition is healthy and natural to an extent, and those who attain excellence in a particular area will and should be recognized. The problem is not the competition, it is the individual's disposition to experience distress around competition. Beyond accomplishing nothing, it can be counterproductive to the ability to function well.<sup>44</sup> Students also need to be aware that the actual percentage that secure employment within months of graduation is generally high even now, and that "winning," while a worthwhile goal, is actually not the key to gaining satisfaction in personal or professional life.<sup>45</sup>

A potential contributor to this area of student distress is the fact that virtually all of their role models, the law faculty, were at the top of their classes and on their journal staffs. Law teachers need to pay special attention not to convey, expressly or tacitly, the message that only the "top" students are valuable or employable. In most professional contexts, it is character, consistency, and competence that rule the day,<sup>46</sup> but student behavior demonstrates that they believe otherwise.

*E. Law Students Really Need to Know that, as Attorneys, Their Best Personal Attributes are More Important than Their Best Skills or Performances*

Law school seems to communicate to students that it is how you do, rather than who you are, that really matters.<sup>47</sup> This message encourages fear of mistakes, anxiety over grades, and singular devotion to competition, and can result in hectic, even frantic lives.<sup>48</sup> Students who bring this approach with them to the practice of law are obvious candidates for high stress, low self-esteem, and burnout. Students and lawyers need to realize that good, valuable people make mistakes as a normal part of human life, and that mis-

---

control over the latter experience than the former, despite an appropriately strong effort toward winning the day.

<sup>44</sup>*Supra* note 27 and accompanying text.

<sup>45</sup>Healthy attitudes in general are discussed below in Point G, and in further detail in Part II of this article.

<sup>46</sup>This may be a difficult message for some law teachers and senior attorneys to convey, particularly if we have gained a significant portion of our esteem from academic performance. Whatever happened to the adage that "A" students become professors, "B" students become judges, and "C" students make money?

<sup>47</sup>*See Making Docile Lawyers, supra* note 31, at 2034-2036.

<sup>48</sup>*See infra* note 56 and accompanying text.



takes reflect transitory imperfections in what one is doing, rather than fundamental flaws in what one intrinsically is.<sup>49</sup>

On a related note, law students often manifest extreme concern over how they may appear to or compare with others (including how their performance reflects on them). It is interesting to note that, of all the psychological scales reported in the Beck/Sales study, attorneys displayed the highest incidence of dysfunction in the area of "interpersonal\_sensitivity" a measure of insecurity specifically focused on the need to compare one's self with others.<sup>50</sup> An astounding 35% of the responding attorneys were found to be distressed to the "clinical" level on this scale.<sup>51</sup> One manifestation of this phenomenon may be the self-inflating posturing not uncommon among lawyers (and law students)—a sort of egotism that results from the sense that one needs to be better than others.<sup>52</sup> In contrast, genuine self-esteem involves the sense that one is inherently good, without comparison with or reference to others, and regardless of whether one committed palpable errors that day.<sup>53</sup>

In my teaching I use the terms "performance-esteem" and "other-esteem" to contrast the foregoing attitudes with genuine self-esteem. In my experience, openly addressing the realities—that one's performance is variable from day to day, and that outperforming others, impressing them, or shaping their attitudes is even less predictable—greatly ameliorates student anxiety around these issues. Lawyers and law students need direction to find a reliable and constant basis for self-esteem, in order to reduce their dependence on the vagaries of performance-esteem or other-esteem and to create a foundation for a balanced, healthy life.<sup>54</sup> Despite the fact that most law faculty have

---

<sup>49</sup>The discussion of self-esteem and self-actualization in Part II will clarify this point.

<sup>50</sup>Interpersonal sensitivity is defined as "feelings of personal inadequacy and inferiority in comparison with others". Beck, *supra* note 4, at 14.

<sup>51</sup>"[I]ndividuals scoring two standard deviations away from the mean are considered clinically distressed and in need of treatment." *Id.* at 15, 18.

<sup>52</sup>To point up the difference between egotism and self-esteem, I ask students or lawyers what "average" connotes to them when used to describe a person. Most people, of course, tend to cringe a bit—revealing their perceived need to be better than average. The negative sense of the term "just average" even more clearly indicates the emphasis on *comparative* excellence, rather than *intrinsic* worth, in our professional culture and broader society. I suggest that competitive excellence in fact does not produce genuine self-esteem, and can create a continuing need to excel if the person is deriving his primary sense of personal worth in this way. Again, this is not to diminish the importance of doing one's best, but rather to emphasize the damaging effect of internalizing one's appearance or performance as a measure of one's self-worth.

<sup>53</sup>The qualities of self-actualizing people discussed in Part II confirm these observations.

<sup>54</sup>Maslow emphasizes the self-actualizer's relative autonomy from such external matters, acceptance of the human tendency for errors, and the consistent satisfaction s/he derives from a self-directed approach to her life. See MASLOW, *MOTIVATION*, *supra* note 10 at 156-57. See also *infra* note 116, and accompanying text concerning Maslow's findings that self-actualizing people are industrious and highly effective as well.

consistently excelled in their academic endeavors, we must, again, take special care to articulate to students and lawyers the importance of character over competition in the quest for professionalism and life satisfaction.<sup>55</sup>

*F. Law Students Really Need to Know that it is Possible to Consistently Feel Good About Themselves as Lawyers, and Have the Respect of Their Peers, Regardless of the Outcome of their Cases . . . and they Need to Know How*

The desire to prevail is natural; the need to prevail is destructive. In the immediate aftermath of competitive situations it is natural for the loser to feel disappointed and the winner to feel happy. However, problems arise if the outcome is internalized as a reflection of one's self: the loser is likely to become depressed; the winner may become boastful or egotistical; and these feelings will tend to persist. Like students overstressing themselves to make top grades or put on flawless performances, those lawyers who base their esteem and satisfaction on positive case outcomes are likely to become compulsive as they struggle to avoid reality. The numbers speak for themselves: for each typical trial, there will be one winner and one loser. Basing satisfaction primarily on outcomes is unsound, even though so many of us tend to do it. The result is constant anxiety during preparation, and a subsequent emotional roller-coaster experience as outcomes fluctuate.<sup>56</sup> I suggest to lawyers and to my students that they work hard with the intent to prevail, but find a stable basis for their sense of professional satisfaction and personal value in their strong preparation, clear presentation, respectful actions and worthy motives rather than in the relatively unpredictable outcomes of their efforts. This approach to professional life needs to be encouraged in law students, early and often, to interdict any tendency to confuse professionalism with prevailing. Losing cases, disappointing clients, and making some "B"'s (even "C"'s for most of us!) are obviously inevitable, and should not be internalized.<sup>57</sup>

---

<sup>55</sup>Otherwise we are supporting an unusual system akin to reverse denial. No one talks about the reality, but in this case the reality that most of us are quite fine is more positive than the illusory construct—that only the "best" or the "winners" are sufficiently valuable to have good lives. For a stark perspective on the role of negativism and fear in unhealthy systems, see ANNE W. SCHAEF, *WHEN SOCIETY BECOMES AN ADDICT* 92, 93 (1987).

<sup>56</sup>At a recent continuing education program I was offering, an attendee suggested that lawyers become addicted to the adrenalin that this approach constantly produces. His thought is reminiscent of Steven Covey's proposal of an "urgency addiction" afoot in modern society. STEPHEN R. COVEY ET AL., *FIRST THINGS FIRST* 33-35 (1994) [hereinafter COVEY, *FIRST THINGS FIRST*]. The discussion of addictions in Part II may help clarify such broad applications of the term.

<sup>57</sup>These points are discussed further in the sections on *competition*, *control*, and *stress* in Part II of this article. And again, this does not suggest that one should do less than his/her reasonable best.

*G. Law Students (and Lawyers) Really Need to be Encouraged to Define Success in Terms that are Personally Meaningful, Achievable, and Which Include the Experience of a Full, Healthy, and Satisfying Life*

A satisfying life experience requires a measure of self care,<sup>58</sup> supported by a definition of success which is personally meaningful<sup>59</sup> and attainable with a reasonable amount of effort.<sup>60</sup> This may seem obvious, but the intense focus of so many law students both on the kind of after-graduation employment typically considered prestigious,<sup>61</sup> and on the competition for grades and honors during the school years, suggests an adopted, common standard of success rather than many personal ones. The incidence of dissatisfaction in the profession further suggests that many lawyers have not respected their actual needs when defining success for themselves. Because lawyers are notorious for living unbalanced lives,<sup>62</sup> it is important to remember that a consistently satisfying life generally requires balancing work or study with time for ones' self, family and friends, and play.<sup>63</sup>

The potential pressures of a lawyer's life often militate against both personal choices and the maintenance of balance. It is therefore crucial to thoughtfully develop one's *personal* definition of success, and then regularly review one's life experience to maintain health, balance, and personal satisfaction. Distraction from personal purpose can translate into the effective loss of significant portions of one's life.<sup>64</sup>

---

<sup>58</sup>"Thwarting of unimportant desires produces no psychopathological results. Thwarting of basically important needs does produce such results". MASLOW, *MOTIVATION*, *supra* note 10, at 57. *See also infra* notes 87-93 and accompanying text. Much law student and lawyer distress would be obviated by acknowledging that desires for high grades and high income, though valid, are unimportant in this context, particularly when they are permitted to displace one's pursuit of basically important needs such as one's self care in its many dimensions.

<sup>59</sup>Steven Covey advises readers to "start with the end in mind." COVEY, *supra* note 21, at 97-99 (1989). Attorneys respond strongly when I repeat the observation that despair can be defined as struggling to climb the proverbial ladder, finally reaching the top, and finding that one has leaned her ladder against the wrong wall.

<sup>60</sup>Students grasp well the analogy of a high jumper setting her bar so high that she is constantly straining and falling short.

<sup>61</sup>Much of the discussion of dissatisfaction in the profession focuses on the abuses of many large law firms. *See* LINOWITZ, *supra* note 9, at 100-05 (1994). While such positions generally offer higher income than others, student choices to surrender their life quality to concerns about image or loan balances must be suspect. *See supra* note 29 and accompanying text.

<sup>62</sup>Daicoff, *supra* note 1, at 1392-94 (1997); and GERALD LE VAN, *LAWYERS' LIVES OUT OF CONTROL: A QUALITY OF LIFE HANDBOOK* (1992).

<sup>63</sup>Bryan Robinson offers a self-evaluation exercise designed as a "balance wheel". BRYAN E. ROBINSON, PH.D., *WORK ADDICTION* 138-45 (1989).

<sup>64</sup>Otherwise, one risks great disappointment upon reaching the top of a ladder leaned on the wrong wall. *See* COVEY *supra* note 59. In Part III I also offer a poignant

*H. Law Students (and Lawyers) Really Need to Know that Good Appearances do Not Necessarily Indicate a Good Life*

The experience of life can differ markedly from its appearance. Some wealthy, powerful people are miserable; some of modest means and position enjoy their lives thoroughly. It is curious that the term "quality of life" generally conjures up images of external affluence, since quality of life is primarily an internal matter.

Awareness of this principle can help law students and lawyers stay connected with the many internal dimensions of themselves—desires, feelings, values, and personal goals and needs—which are crucial to a satisfying life. This does not mean that one should not seek prestige or affluence,<sup>65</sup> but the assumption that they define a good life, or are absolutely required for one, is incorrect, and has undoubtedly helped create many compulsive or addicted students and lawyers.<sup>66</sup>

*I. Law Students (and Lawyers) Really Need to Know that Their Level of Professionalism will Probably Improve if They Live a Full, Satisfying Life*

Professionalism, as discussed in this article, transcends the limited sense of competence to include the more aspirational qualities traditionally associated with the ideals of the legal profession: broad vision and wisdom; integrity and deep commitment to values; compassionate regard for humanity; unselfishness and the genuine desire to serve others; self-confidence; individualism; and leadership.<sup>67</sup> When the relative power and freedom which accompany the license to practice law are not tempered by such qualities, attorneys are likely to harm the functioning of the judicial system, the reputation of the profession, and their self-concept as well.

Psychological studies strongly suggest that emotional maturity, personal satisfaction, and the expression of the qualities of professionalism tend to accompany and encourage one another.<sup>68</sup> Knowing that satisfied lawyers tend

---

journal entry of a student discussing his relative's unhappy life as a lawyer.

<sup>65</sup>I often point out in my presentations for lawyers that the root meaning of "affluence" is "flowing smoothly or moving easily". WEBSTER'S NEW WORLD DICTIONARY 23 (2d College ed., 1980). How many lawyers have enough money but are stressed and tense rather than "flowing easily" through life? The attorney who is generally content and living in personal balance *experiences* the quality of affluence much more than the one who is generally tense and overworked, regardless of their relative material wealth.

<sup>66</sup>Addictions are discussed further in Part II.

<sup>67</sup>Such qualities are intended to represent the ideals of the learned professions generally, exemplified for attorneys by the "lawyer-statesman" model. See KRONMAN, *supra* note 29, at 11-14. While I am aware of no generally accepted listing of these qualities, I have not received significant disagreement after presentation of this list to numerous lawyer and law student groups.

<sup>68</sup>The interrelatedness of many of these concepts is discussed in Part II of this article and is diagramed in the appendices. See also Daicoff, *supra* note 1, at 1395.



to be more professional and that professional lawyers tend to be more satisfied, and understanding the process which human life is thought to undergo in its progress to this level, can serve to focus law students and lawyers on all of these areas of concern.<sup>69</sup> This is a primary focus of the material in Part II of this article.

*J. Law Students (and Lawyers) Really Need to Know that a Respectful, Caring Attitude and Consistent Enjoyment of Life are Signs of a Mature, Healthy Person*

This point is strongly supported by the psychological findings summarized in Part II of this article, as is the converse truth that overwork and abusive attitudes toward one's self and others are symptoms of immaturity, and possibly of addictive processes.<sup>70</sup> I emphasize this as a separate point because, despite the current emphasis on restoring ethics and professionalism to lawyering, much of the common culture of law school and law practice settings obscures the importance of decency—toward one's self as well as others—by overemphasizing competition, production, and accomplishment. Attorney distress resulting from living out of balance obviously contributes to the poor public perception of the profession, while also undermining personal satisfaction. The particular nature of many practice settings, involving both constant demands and exposure to the problems of others, can lead lawyers and judges to lose the capacity to really care about the *people* involved with the problems. Further, the *law's* requirement for distinguishing and analyzing can create a habit of judging and ranking people in the same way that we deal with ideas and issues, rather than as unique human beings. Law teachers, bar leaders, judges, and attorneys in senior positions need to clearly model, and espouse with conviction, the principles of life balance and respect for others. It is irrational for us to bemoan the public's lack of respect for us—and we should expect no significant change in that regard—while many of our own do not consistently convey respect for others, including other members of the profession, or for themselves.

III. PART II: WHY LAW STUDENTS (AND LAWYERS) SURRENDER THEIR LIFE SATISFACTION AND PROFESSIONAL IDEALS

The propositions in Part I express my belief that the lives of many lawyers and law students are acutely uncomfortable as a result of confused priorities. Many of us essentially are conducting ourselves as if deeply human elements of our lives, of our selves, and of others don't exist or don't matter. The following material presents aspects of psychology and addiction theory as my

---

<sup>69</sup>I am finding that practicing lawyers, even more than students, are encouraged by this information. I present it to them, with substantiation, much as set forth in Part II of this article. This approach seeks to reduce the many current problems in the profession to basic causes, and enables lawyers experiencing those problems to shift their focus from a variety of seemingly unmanageable difficulties to a few workable solutions.

<sup>70</sup>The most psychologically healthy people are found to have deeply democratic character structures and to regard differences of such as class and race as meaningless. See *infra* note 141 and accompanying text.

working hypotheses to support the propositions in Part I. I believe these theories explain the problems in the profession in a coherent and unifying context, and are therefore useful in developing effective approaches to the various problems plaguing the profession. Some students find that this information unburdens them immediately,<sup>71</sup> and written evaluations from continuing education programs for lawyers have been consistent. The principal points include:

- The requirement for appreciation and expression of one's full "self", particularly including one's internal qualities, for development of life satisfaction;
- the potentially dehumanizing tendencies inherent in the study and practice of law;
- addiction as a process of disconnection from one's feelings and internal sense of self, and the striking similarities between addictive personalities and the stereotypical traits of many lawyers and law students;
- the need for control among lawyers and law students, and its relationship to the dynamics of stress, excessive dependence on the external environment, and addiction;
- the nature of professionalism and consistent life satisfaction as mutually supportive, and development of both as enhanced by regular reference to one's more subjective internal qualities.

*A. Seeking the Fundamental Error: Internal or External Focus?*

We can begin to unify our understanding of the health, satisfaction, and professionalism problems of law students and lawyers by noting our pronounced tendency to focus on "externals" (symbols) rather than "internals" (one's personal values, feelings, character, and conscience). We as a group seem to be strongly driven by symbols and apparent security: grades, credentials, win ratios, power, money, and tangibles that suggest affluence, prestige, or competitive advantage.<sup>72</sup>

As previously mentioned, these matters, while desirable and important, ultimately do not determine a person's level of satisfaction in life. In fact, such a primary focus obscures the value of one's innate human qualities and thereby undermines one's ability to experience genuine self-respect and respect for others. It is consequently common to find lawyers who excel in competition

---

<sup>71</sup>I received enough positive feedback from students during my first several semesters presenting this material spontaneously, in situations of particular student anxiety or distress, that I made it a required part of my course. During the first few weeks of the semester during which I began providing the material in writing as well as through discussion, approximately half of my students individually approached me after class or in my office and expressed unsolicited appreciation for the perspectives provided.

<sup>72</sup>"Externalizing" tendencies related to law study and practice, including the agency role of attorneys and the need for objectivity and analysis, are discussed below in Section D, *Inhibition of Attorney Satisfaction and Sense of Self*.



for the externals described, but who are tense, unpleasant, or highly dissatisfied with their lives—perhaps even depressed or struggling with addictions.<sup>73</sup>

A spectrum of respected sources tell us that high levels of emotional health, maturity, and life satisfaction depend on constant reference to such subjective qualities as one's values, commitments, and character.<sup>74</sup> Such a habit of self-referral results in actions which naturally express core aspects of one's self, and therefore provide the individual with a continuing sense of integrity.

Unfortunately, living such a self-directed process is somewhat rare in today's society.<sup>75</sup> Partly because of the increased pressure for earnings and apparent success typical of the modern, more business-oriented law firm, commentators recognize that this quality of life is becoming increasingly difficult for attorneys as well.<sup>76</sup> Much of the story of modern lawyering can be gleaned without looking past titles such as "The Lost Lawyer",<sup>77</sup> "The Betrayed Profession",<sup>78</sup> and "At the Breaking Point."<sup>79</sup> Seemingly in preparation for modern law practice, many law students undergo analogous processes involving the surrender of their more idealistic aspirations for lawyering, as well as their life balance, to the perceived need to compete for grades and future job security.

---

<sup>73</sup>Perfectionism and workaholism, for example, are process addictions which, like substance addictions, are common among both law students and practicing attorneys. See *infra* note 118.

<sup>74</sup>See e.g. MASLOW, *MOTIVATION*, *supra* note 10, at 153-57 (2d ed. 1970); COVEY, *supra* note 21, at 98-99; *infra* notes 80-81 and accompanying text. It may be particularly interesting for lawyers to consider that two ancient writings which directly address leadership, governance, and the skill of conflict both focus entirely on the *inner* qualities of the individual. See TAO TE CHING (Stephen Mitchell trans., 1988) (6th Century B.C.) [hereinafter TAO TE CHING]; and BHAGAVAD-GITA (Maharishi Mahesh Yogi trans., 1967) [BHAGAVAD-GITA]. These and subsequent references to sources which may seem esoteric should not be surprising. The subject problems have been addressed for years with no real solutions at hand. Typically one needs to look beyond the level of complex problems for their solutions. When the issues involve the collective personal satisfaction and behavior of a profession in conflict, the holistic thinking of the humanistic psychologists, and the Eastern approaches to developing human potential, are all attractive. I refer here to the most accessible and relevant translations of which I am aware, and later to the related Transcendental Meditation Technique which bridges directly to modern culture with supporting scientific research. See *infra* note 86.

<sup>75</sup>And probably equally rare in earlier societies, given the frequency of scholarly and religious discussion of the need for such an approach. See e.g. *infra* notes 80-85 and accompanying text.

<sup>76</sup>The increasing pressure on attorneys resulting from the business orientation is a commonplace observation in the literature. See e.g., LINOWITZ, *supra* note 9, at 105-06.

<sup>77</sup>KRONMAN, *supra* note 29.

<sup>78</sup>LINOWITZ, *supra* note 9.

<sup>79</sup>AMERICAN BAR ASSOCIATION, SECTION OF GENERAL PRACTICE, *THE REPORT OF AT THE BREAKING POINT* (1991).

### B. Learning from a Cricket

There are many restatements of the importance of remaining true to one's values, from ancient prescriptions ("Know Thyself"),<sup>80</sup> to Shakespeare ("To Thine Own Self Be True"),<sup>81</sup> to Walt Disney's advice through Jiminy Cricket to "always let your conscience be your guide".<sup>82</sup> These are not just sweet or lofty platitudes; they are time-tested and practical guidelines that lawyers would do well to adopt. When one does what she feels is right, for what she feels is the right reason and in the right way, an adverse outcome is still naturally disappointing, but does not eliminate the positive sense of self gained from the self-expressive process. With such habits of self-referral, one can learn to consistently feel good about one's preparation and one's working process—essentially having done one's part honorably and conscientiously—and can more easily accept what would otherwise be perceived as failure simply as an event realistically<sup>83</sup> beyond one's control.<sup>84</sup> This approach also moderates tension or anxiety over the potential outcomes of one's efforts, since fulfillment is derived from the *process* of completing the work. While such an internally-directed life process often results in the attainment of relative wealth and prestige, these matters should be recognized as secondary in importance to more fundamental benefits, such as increased life satisfaction and peace of mind, or decreased stress and anxiety.<sup>85</sup>

### C. Life Satisfaction Requires Psychological Maturity

Groundbreaking psychologist Abraham Maslow discovered the importance of this kind of self-directed life process in his studies of human motivation and development.<sup>86</sup> Maslow discerned a hierarchy of human needs which operates

---

<sup>80</sup>This quote by an anonymous author is inscribed on the temple of Apollo at Delphi.

<sup>81</sup>WILLIAM SHAKESPEARE, *HAMLET* act 1, sc. 3, line 78.

<sup>82</sup>*Pinnocchio* (Film, Walt Disney Productions) (1940).

<sup>83</sup>Studies of self-actualizing people indicate that they have a particularly clear perception of reality, probably because they are comfortable with it. MASLOW, *MOTIVATION*, *supra* note 10, at 153-56. Maslow's work is described in some detail in the following sections of this article.

<sup>84</sup>Relevant examples could include an unfavorable verdict, average grades, loss in a moot court competition, or failure to gain a journal position, all despite one's best efforts.

<sup>85</sup>See *infra* text accompanying notes 106-08 and 116, discussing Maslow's finding that self-actualizing people are consistently fulfilled, peaceful, and unworried.

<sup>86</sup>Maslow was able to identify relatively few fully mature, "self-actualized" people to study. I am nonetheless comfortable relying on much of his writing, at least for working theories, because it appears to have great explanatory power when applied to the numerous problems manifested among law students and lawyers. It is particularly helpful for understanding the stark inconsistency between the high collective intelligence, power and affluence of attorneys, and the elevated incidence of psychological distress, depression, addiction, and simple unhappiness among us. It is also helpful to note that in his later work Maslow determined that many people exhibit

universally, motivating each person through the sequential fulfillment of a series of "lower" needs, and eventually to the fulfillment of "higher" needs.<sup>87</sup> Maslow found that only those persons who are fulfilling the higher needs for self-esteem, self-expression, and self-actualization are reliably content and satisfied with their lives. In contrast, people who are primarily motivated by any of the "lower" needs generally experience life as a series of struggles, with only moments of "episodic relief" when perceived deficiencies are met.<sup>88</sup> The hierarchy of needs and the striking quality of life experienced by self-actualizing people are set forth in the following graphic and table.

---

some of the qualities of self-actualization, though few apparently were experiencing the state in a sufficiently balanced way to be considered fully actualized. MASLOW, *MOTIVATION*, *supra* note 10, at xx.

There are additional experiential sources that support the application of Maslow's work to law student and lawyer distress. First is the anecdotal success of my early attempts to apply this information to everyday law student and lawyer experiences; those limited results are described in Part III of this paper. Second, there is a profusion of relevant scientific research, primarily investigating a contemporary self-development technique (the "Transcendental Meditation Program as taught by Maharishi Mahesh Yogi"), which appears to objectively confirm Maslow's optimism about the universal potential for self-actualization and holistic growth. This technique has been applied broadly in Western cultures; published studies indicate that it consistently produces measurable growth toward self-actualization. Charles N. Alexander et al, *Transcendental Meditation, Self Actualization, and Psychological Health: A Conceptual Overview and Statistical Meta-Analysis*, J. SOC. BEHAV. & PERSONALITY 189-247 (1991).

A brief review of the numerous other published studies of this technique suggest accompanying improvements in many parameters, including: increased self-esteem; decreased anxiety, hostility, and addiction; reduced aging and frequency of disease; increased intelligence, creativity, and internal-directedness/autonomy from the environment; and improved moral reasoning. An annotated bibliography lists 508 research studies on this technique alone, approximately 30% of which are published in independent journals. DAVID ORME-JOHNSON, *SUMMARY OF SCIENTIFIC RESEARCH ON MAHARISHI'S TRANSCENDENTAL MEDITATION AND TM SIDHI PROGRAM* (1998).

Because almost all of these studies were performed on otherwise unremarkable members of Western populations, the results appear to confirm Maslow's findings that intimacy with one's internal self produces a balanced state of increased maturity, health, creativity, individuality, and life satisfaction. Considering the name of this technique, it is also striking that Maslow's later work describes among his self-actualizing subjects a more advanced subgroup of "transcenders," who exhibited related qualities particularly strongly. ABRAHAM H. MASLOW, *THE FARTHER REACHES OF HUMAN NATURE* (1993) [hereinafter MASLOW, *FARTHER REACHES*]. This material taken together encourages me to proceed, on the theory that essentially anyone, including law students and lawyers, can develop enhanced levels of psychological maturity, and that as they do, their life satisfaction and level of professionalism is likely to markedly increase. A longitudinal study on law students and lawyers of the effects of this meditation technique, and other programs promising to produce holistic self-development, would be of obvious interest.

<sup>87</sup>MASLOW, *MOTIVATION*, *supra* note 10, at 51-53.

<sup>88</sup>*Id.* at 57.

<b>Growth: The Hierarchy of Human Needs</b>		
	↑	<b>Satisfaction: The Higher Needs</b>
<b>SELF-ACTUALIZATION</b>	↑	<i>Focused on Character and Growth</i>
<b>SELF-EXPRESSION</b>		<i>Motivation</i>
↓	↑	<i>Fulfillment-Based (Internalized</i>
<b>SELF-ESTEEM</b>		<i>Experience)</i>
↓	↑	<i>Constant Appreciation, Gratitude</i>
(Higher Needs)		<i>"Overflowing Abundance"</i>
-----		
(Lower Needs)		
<b>COMPETENCE/RESPECT</b>	↑	<b>Stress: The Lower Needs</b>
↓		
<b>BELONGING/LOVE</b>	↑	<i>Focused on Deficiencies, Scarcity,</i>
↓		<i>and Competition</i>
<b>SECURITY/SAFETY</b>	↑	<i>Constant Needs from Environment</i>
↓		<i>(Externalized Experience)</i>
<b>SURVIVAL</b>	↑	<i>Episodic Satisfaction (Moments of</i>
		<i>Relief)</i>

ABRAHAM H. MASLOW, *MOTIVATION AND PERSONALITY* 35-58 (2d ed., Harper & Row Publishers New York 1970).

#### PSYCHOLOGICAL MATURITY: THE "SELF-ACTUALIZER"

<p>◆ <b>SELF-SECURE</b>            Lower needs met            Peaceful, un-worried            Highly individual            Differences (people, experiences) welcomed            Service oriented (rather than ego-centered)            Seeks good of others, mankind            Transcends cultural values and expectations</p>	<p>◆ <b>WISE</b>            Undistorted perception of reality            Superior awareness of truth            Universal thinking (holistic, non-dual)</p>
<p>◆ <b>FULFILLED</b>            Constantly satisfied (process focus)            Continued freshness of appreciation            Constant sense of good fortune (grateful rather than complaining)            "Peak" experiences from simplicity            Constant creativity (new, playful, flowing)            "Overflowing abundance"</p>	<p>◆ <b>HUMANE</b>            Deeply democratic character structure            Appreciation of human nature, self, others            Differences (race/class/belief) meaningless            Humble, accepts imperfections</p>
	<p>◆ <b>VALUE-CENTERED</b>            Growth and Character motivations            Self-governing, self-disciplined            "Most ethical of people"            Lead rather than follow</p>

ABRAHAM H. MASLOW, *MOTIVATION AND PERSONALITY* 153-63 (2d ed., Harper & Row Publishers New York 1970).



Notice that fulfillment of the lower needs is primarily dependent on matters external to the individual: food or shelter for survival; protection for security; love or affiliation with others for belonging; the opinions of others for a sense of respect or competence. The normal course of human growth requires that children and young people, who are naturally more dependent on their family, school, and social environments, fulfill these "lower" needs on the way to maturity. However, Maslow found that once an individual is fulfilling the "higher" needs for self-esteem and self-actualization, she becomes largely self-sufficient, or "autonomous", with reference to her psychological needs, and is able to remain satisfied despite loss of support from external sources perceived as crucial at less mature levels of need.<sup>89</sup> This does not suggest, of course, that an emotionally mature attorney would not enjoy financial wealth, comforts, or applause from clients and judges; it does, however, clarify that she will not be *driven* by the desire for such things.<sup>90</sup>

#### *D. The Inhibition of Attorney Satisfaction and Sense of Self*

Disproportionate numbers of attorneys are dissatisfied with their work<sup>91</sup> despite the fact that their careers generally confer significant power and financial rewards in comparison with the general population. Satisfaction is an internal, self-based experience. A person can be quite affluent and apparently successful in career matters and still be intensely dissatisfied. This seemingly obvious truth is commonly ignored in our broader contemporary culture, and attorneys may be particularly prone to such dissatisfaction for a variety of reasons. As discussed above, lawyers and law students often focus intensely on external matters,<sup>92</sup> and many have been willing to sacrifice personal life

---

<sup>89</sup>*Id.* at 162; ABRAHAM H. MASLOW, TOWARD A PSYCHOLOGY OF BEING 179-81 (2d ed. 1968).

<sup>90</sup>My suspicion is that many law students and lawyers become fixed or "stuck" in the lower needs, in large part because of numerous factors common to legal culture that inhibit one's passage to genuine self-esteem and self-expression. I further suspect that the thwarted progression to more internally-derived need satisfaction creates a sort of endless loop wherein one essentially never perceives her lower needs to be met. For example, an unnatural or exaggerated need for security may play out far beyond actual life needs, leading lawyers to work incessantly to save for a distant retirement; or making law students compulsively anxious about grades, mistakes in class, or the challenges of a job search. Similarly, distortion of the need for competence may result in the perfectionism commonly experienced among lawyers and law students; and exaggeration of the needs for belonging or respect may manifest as excessive concerns for image or the opinions of others. It is clear from Maslow's work that self-actualizers avoid or transcend these short-circuits in their growth to fulfillment. It may be that these traps are particularly seductive to lawyers and law students, for reasons such as those discussed in the following section. For an explanation of addiction as fixation in immature developmental stages, see JEROME D. LEVIN, PH.D., TREATMENT OF ALCOHOLISM AND OTHER ADDICTIONS 229-32 (1987).

<sup>91</sup>See McNeil, *supra* note 5, at 10-11.

<sup>92</sup>It is unclear to what extent this superficial focus represents a predisposition of lawyers and law students, and to what extent it is a result of our legal education. If one

quality in these pursuits. Such sacrifices in themselves can contribute to dissatisfaction, and many additional factors common to law study and practice can powerfully distract attention from personal values and internal sources of satisfaction.

The factors discussed below are largely inherent in the nature of what law students and lawyers do, and consequently should be acknowledged as "occupational hazards" of the profession and dealt with consciously. In my estimation all of them tend to fix people in the lower needs, and thus discourage a self-referent, self-expressive experience. To the extent that this occurs for a student or lawyer, Maslow's work indicates that one's potential for life satisfaction will be limited to little more than "moments of episodic relief".<sup>93</sup>

First, law school trains students to be rigorously analytical, and offers a panoply of recognition for analytical excellence. This focus on analysis, though essential to the law school mission, can result in devaluation of the students' more subjective and "non-rational" qualities of feeling, value, intuition<sup>94</sup> or character. Indeed, most classrooms and courtrooms would be uncomfortable at best with expressions of deep feeling or intuitive opinion competing with concrete analysis of matters of fact and law.

Second, lawyers generally act as agents for others. We therefore learn to value the ability to advocate—even passionately—any side of an issue. The economics of law practice also often motivate lawyers to advocate positions contrary to their conscience.<sup>95</sup> The result is that many of us begin to compart-

---

loses one's sense of personal worth and uniqueness during law school, it would be natural to focus one's attention more externally. *Making Docile Lawyers*, *supra* note 31 offers a concrete example of such a process, suggesting that students at Harvard Law School often fall back on lucrative employment offers from large corporate law firms to fill a void created by their loss of ideals and self-esteem in law school. I hope to conduct an empirical study of the effect of legal education on self-esteem, self-actualization, and related matters in the near future.

<sup>93</sup>See *supra*, note 90. This description recalls much of my experience as a law student and lawyer, and often draws nods of recognition from attorneys at continuing education programs.

<sup>94</sup>I do not know the extent to which such subjective qualities, more commonly attributed to women in our society, may have been suppressed as a result of the traditional male domination of legal education and law practice, but I imagine it is substantial. See Sandra Janoff, *The Influence of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 194 (1991); see generally Daicoff, *supra* note 1, at 1399-1401.

<sup>95</sup>There are important distinctions for a lawyer to draw between positions he disagrees with, or positions that are unpopular, and positions that violate his conscience. I believe one must avoid the latter in order to maintain a healthy regard for one's self and all that flows from that self-regard. These are subjective matters. For example, when faced with a potential client requesting action or advocacy of a position that all might agree to be reprehensible, one lawyer may be unable to proceed in good conscience, while another may be compelled to proceed by a genuine and overriding sense of fairness, belief in the nature of the adversary system, commitment to the universality of constitutional rights, etc.



mentalize, or even ignore, our own feelings and values concerning the issues we deal with for most of our waking hours. Such an approach obviously tends to disconnect us from core sources of a profound sense of self. Another potentially dehumanizing factor is the adversarial nature of the legal system, which can encourage a win-lose, law-of-the-jungle mentality—literally survival of the fittest. For many students, law school takes on this flavor early: competition and one-upmanship are experienced as necessities. It may be that some people are attracted to law because these qualities appeal to them; others may react to the demands of legal education and practice by assuming these qualities; and for others these "nature" and "nurture" issues may combine. Regardless, this attitude suggests that one is primarily motivated by the very early needs in Maslow's hierarchy, those for survival and security.<sup>96</sup>

We should also not underestimate the impact on lawyers and law students of the intensely negative public perception of the profession.<sup>97</sup> To the extent that one internalizes those perceptions, her progress toward self-esteem will suffer. Then there is the persistent stress presented by a constant flow of clients with major life problems—and with maladaptive attitudes and behaviors that are likely to be played out in their relationships with the attorney. Often clients are also demanding and have unrealistic expectations for results, which are fueled in part by high hourly rates driven by yet another attorney stressor—the high overhead typical of current practice. A sense of constant pressure is consequently common among lawyers, and one's capacities for simple decency and caring may be further eroded by regular dealings with other attorneys affected by the same stressors.

Additional factors which are particular to law students and which may tend to keep them focused on the "lower" needs in the hierarchy are inherent in the content and style of education at many, and perhaps most, law schools. First, as discussed above, the often pervasive emphasis on grades and honors suggests that only those at the top will be considered valuable, and creates a sense of competition for survival. Additionally, traditional case analysis, though crucial for preparation, can leave even strong students with a baseline sense of incompetence if emphasized to the exclusion of the many other skills that students know will be necessary for law practice.<sup>98</sup> And the Socratic method, particularly if implemented by an abusive professor, can create a law school experience dominated by insecurity, anxiety, and the fear of being shamed in the presence of one's peers.<sup>99</sup> Such factors may explain why, when

---

<sup>96</sup>See *supra* notes 87-90 and accompanying text.

<sup>97</sup>It is beyond the scope of this paper to consider the portion of such public disgrace we may have earned, although the other documented problems in the profession suggest it is substantial. Journals of my clinical students confirm my observations, as a litigator, that far too many lawyers and judges have lost their tolerance, respectfulness, patience, and ability to care.

<sup>98</sup>Many students have confirmed this to me personally.

<sup>99</sup>I also believe that the Socratic method, to the extent that it suggests to students a single right answer which is known by another (the teacher), and which students will

I ask my classes to evaluate their position on the hierarchy of needs, most place themselves at the level of survival or security, with a very few at the level of competence or beyond.

Taken together, these factors (and there are undoubtedly others) do much to explain why law students and lawyers are at particular risk for the kinds of problems we so commonly experience. They all undermine a person's ability to appreciate her innate human qualities and her uniqueness as a person, and consequently erode her capacity to genuinely respect herself. These occupational hazards require for most of us some regular time and attention to strengthening personal balance, connecting with our subjective values and faculties, and self-care<sup>100</sup>—practices often disregarded by lawyers and law students. Being a whole person is a choice for most people, but a requirement for the fitting practice of law. The low public view of the profession and the high rates of addiction, depression and dissatisfaction among us attest to our shortcomings in this most important regard.

#### *E. What One Feels to be Right*

Recall the suggestion that as lawyers we should "do what we feel is right, for what we feel is the right reason."<sup>101</sup> We have seen that the analytical demands of the law, the agency role, and other factors can lead one to ignore, or even denigrate, the importance of feelings. The role of feeling deserves special emphasis because many, and perhaps all, of the most vital and fulfilling human experiences—joy, satisfaction, love, and appreciation—are experienced on the level of feeling. If one loses touch with his feelings he loses the capacity to experience the richness of life, which can result in an abiding sense of emptiness, and potentially lead to addiction<sup>102</sup> and depression. (If, as I expect, this discussion causes some readers to feel uncomfortable, it serves to confirm that many of us have become comfortable avoiding feelings.) Additionally, unfeeling conduct commonly attributed to lawyers—callousness, incivility and the like—damages a lawyer's reputation among her peers, and her

---

discover if they are thinking well, inherently undermines creativity and genuine (internally-derived) self worth. For more thorough critiques of the law school experience, see *infra*, note 160.

<sup>100</sup>Methods are suggested in Part III of this article.

<sup>101</sup>I do not ignore the many conflicts that can arise during client representation. Much useful discussion, beyond the scope of this paper, can be had concerning the difficulty of remaining true to one's own values, feelings, etc. while zealously representing another with conflicting values. See MARY ANN GLENDON, *A NATION UNDER LAWYERS* 40-84 (1994) for a discussion of conflicts inherent in lawyering.

<sup>102</sup>Studies document the high incidence of addiction among lawyers, including the startling conclusion of Beck, Sales and Benjamin that 70% of their respondent lawyers were likely to have problems with alcohol during their careers. Beck, *supra* note 4, at 3. The loss or suppression of feelings as part of the addiction process generally is discussed below.

relationships with clients and colleagues. This can only have a negative effect on the perception of the profession by the public.

*F. Competition, The Need for Control, The Illusion of Control*

I have discussed the tendency of law students and lawyers to measure themselves by their performance, level of affluence, or by others' opinions. The perceived need to control external circumstances and events is one predictable result of loss of connection with internal sources of self-worth and satisfaction, since external factors alone then determine one's level of satisfaction. It is usually apparent to others when someone is caught up in the phenomenon of image management, or is desperate to obtain a specific outcome. And it is good to recognize the reality that working on one's "image" or boasting about what one does usually reflects a sense of insecurity, and a real lack of connection with and appreciation for one's self.<sup>103</sup>

In many law school cultures the perceived need for control may be seen in a variety of ways. People are often highly motivated to manage (control) how others perceive them—i.e., as intelligent, successful, etc.—and often strain themselves or distort their life balance in the competition for grades and other credentials. Recalling Maslow's hierarchy of needs, these experiences suggest that students are acting from "lower" needs such as those for security, belonging, or respect. Practicing attorneys also seem to commonly act out these needs—by driving themselves, worrying about their image, etc., and losing their life balance and personal satisfaction in the process.

The extraordinary levels of stress in law students and lawyers may well relate directly to efforts to control what is essentially uncontrollable: most if not all of the future, the outcome of cases, or the ability to achieve in constant competition with other students or lawyers. A need to constantly win, be perfect, or avoid criticism must be recognized for the impossibility that it is and regularly contradicted if one is to moderate stress levels. Considering one's potential for fulfillment, a perceived need to attain the unattainable supports a persistent sense of personal failure, and thus blocks progress toward the satisfaction attending the higher experiences of self-esteem and self-actualization.<sup>104</sup>

Given the adversarial nature of most law practice, it is particularly crucial for lawyers and law students to learn to compete in a way which promotes health and balance rather than stress. This can only occur when one is doing

---

<sup>103</sup>Defining one's "self" is not an undertaking common in Western cultures, and may be considered to be a spiritual question. I suggest that deeply subjective qualities, however denominated—conscience, value, feeling, character, or integrity—should be considered qualities of one's self. Issues of spirituality are raised by lawyers and students more than occasionally during my presentations, generally in comments relating to specific religious beliefs. I believe matters of religion and spirituality, while often overlapping, can be quite distinct. I leave such issues for a later article, or for the consideration of each individual so inclined.

<sup>104</sup>See *supra* notes 87-90 and accompanying text.

her best, and is motivated primarily by the desire to express her character and professional skills in her work. One can enjoy competition<sup>105</sup> and derive fulfillment from the process, regardless of the outcome, if one derives satisfaction internally.<sup>106</sup> Such satisfaction can be experienced by every law student or lawyer who is so motivated, despite unfavorable events or circumstances. By contrast, life lived from deficiency motivation,<sup>107</sup> in which competitive outcomes provide one's primary fulfillment, is experienced as a zero-sum game of limited resources and produces tension by its very nature.

Anxiety and the need for control are significantly diminished in people living from the "higher" needs. Maslow found self-actualizing individuals to be quite accepting of their innate humanness, tendency to make mistakes, and physical imperfections. He further observed self-actualizing people to be generally unworried, creative, comfortable with risks, and open to fresh experiences.<sup>108</sup> These expansive qualities are stifled by the illusion of, or perceived need to, control.

#### *G. Stress is Also an Internal Matter*

The high level of stress lawyers experience is often considered to be an inevitable part of law practice. Law students and lawyers are expected to simply accept this proposition, and are then encouraged to minimize potential health problems, depression, and "burnout" by learning to "manage" their stress. It is more useful to consider that such levels of stress in fact are not inherent to lawyering, and instead that the stress we experience in work and life largely depends on a number of internal factors.

Dr. Hans Selye, who popularized the term "stress", has defined it as a set of nonspecific responses of the organism to specific demands (stressors) upon it.<sup>109</sup> This definition clarifies that stress is essentially an internal matter—a biological response of the organism itself.

One of the most important determinants of one's level of stress is profoundly subjective: one's ability to think clearly and choose her priorities with wisdom. The concept of choice in this context is crucial. Each of us constantly makes career and lifestyle choices which, taken together, largely determine the level of potential environmental stress to which we will be exposed. Lawyers and law students are known for making choices that produce high levels of stress.<sup>110</sup> As discussed throughout this article, I believe such choices correlate

---

<sup>105</sup>See, e.g., TAO TE CHING, *supra*, note 74, at Verse 68, describing competition among accomplished professionals in the "spirit of play".

<sup>106</sup>MASLOW, MOTIVATION, *supra* note 10, at 173.

<sup>107</sup>See *supra* notes 86-88 and accompanying text.

<sup>108</sup>MASLOW, MOTIVATION, *supra* note 10, at 155-72.

<sup>109</sup>HANS SELYE, THE STRESS OF LIFE 64 (1956).

<sup>110</sup>See *supra* notes 21-22, 28-29 and accompanying text.



strongly with our collective tendency to depend on external, rather than internal, rewards and recognition.

A third internal component of stress, crucial in the consideration of human health and balance, is that the stress response can be greatly moderated by a person's attitudes, perceptions, and level of need. For the health of a law student or attorney, it would be useful to define "stress" as one's response to any *perceived* demand. Much of our pressure and tension depends on our perception of events and on the expectations we place on ourselves. As discussed in the preceding section, an expectation that is difficult or impossible to fulfill, such as a need to control events or others, creates constant demands on the individual, and hence a continuing internal stress response. This is obviously damaging to overall life quality as well as health, since one utilizes one's biological resources in responding to any stressor, whether real or perceived,<sup>111</sup> potentially to the point of exhaustion and even death.<sup>112</sup>

Maslow's work makes it clear that persons at mature levels of need fulfillment are fundamentally self-sufficient and inner-directed in their life activity, and hence will perceive many fewer needs that *require* environmental solutions. Such people will also not be driven to place themselves in stressful work environments in order to gain the rewards available there. Law students and lawyers who learn to derive their satisfaction from their good motives and responsible professional processes will reliably reduce their level of stress.

#### H. Caring and Stress

Given the problem-focused, uncertain nature of the work that many lawyers do, if one cares too much about clients and outcomes, he is a candidate for depression, exhaustion, and other forms of burnout. It is, of course, natural to want to create positive results for one's self and others. It is only when one's quality of life and sense of worth are seen to depend on particular outcomes that this natural tendency becomes problematic. One of the difficult challenges for lawyers, and perhaps most particularly litigators in the criminal and family systems, is to maintain both a consistently caring, respectful attitude and a sense of detachment from the problems of clients, victims, and other people involved in their causes. If the attorney *needs* to improve the situation of clients or others in order to feel competent or valuable as a professional, the need to control outcomes, with its concomitant stress, is a virtual certainty.

The reality is that the attorney is responsible only to act rightly and diligently in the discharge of her professional obligations to the client and the court.<sup>113</sup>

---

<sup>111</sup>The pounding heart during a fearful dream demonstrates the potential for an intense stress response from an illusory demand. Examples from one's activity might include the disproportionate anxiety experienced before a dental visit, job interview, or business presentation.

<sup>112</sup>SELYE, *supra* note 109, at 65.

<sup>113</sup>The comment to Rule 4-3.5 of the Rules Regulating the Florida Bar states, for example, that "the advocate's function is to present evidence and argument so that the cause may be decided according to law." Florida Rules of Court 1359 (West Group 1998).

Too few attorneys follow such a prescription. This brings us back to an often-repeated precept of this article: that one set as his professional standard the accomplishment of his reasonable<sup>114</sup> best, while taking what one feels is the right action, for the right reason. One can then feel satisfied to have done one's part regardless of the vagaries of circumstance or the decisions/opinions of others.<sup>115</sup> In this way one encourages the consistent experience of self-esteem, and begins to model self-actualizers by doing what one can, with creativity and enthusiasm, and then comfortably accepting the realistic limitations on one's intended results.<sup>116</sup> The ancient Tao Te Ching says it bluntly: "Do your work, then step back—the only path to serenity."<sup>117</sup>

### *I. Are Legal Education and Law Practice Addictive Processes?*

Addictions such as perfectionism, workaholism, and alcohol and drug abuse, are common among attorneys and law students<sup>118</sup> and present a problem closely related to those discussed above. Addictions accompany low self esteem,<sup>119</sup> fear,<sup>120</sup> and disconnection from one's feelings and deeper sense

---

I would add that the definition of "right" action, unless prescribed by code (or despite such prescription, depending on one's jurisprudential view), is a personal one. The earlier discussions of the importance of one's feelings, values, and conscience are particularly pertinent to this consideration. I do not ignore the demanding nature of most clients, nor the economic pressures to prevail. Such considerations come with the territory, but for a healthy lawyer, will not be guideposts for his life.

<sup>114</sup>One's "reasonable best" here is intended to connote strong, responsible effort that does not sacrifice one's health or personal life balance for more than a brief and necessary period (such as intensive hearing preparation). There will always be more that one can do for the client; experience and maturity should bring with them a sense of the proper balance in any given case.

<sup>115</sup>I encourage practicing lawyers to evaluate each day against these standards, perhaps in a journal, as a way of finishing the day with a sense of self-appreciation, and to help ingrain this habit of thinking. Certainly one must continue to *care* about one's clients and their outcomes. Since lawyers are often seen as cold or uncaring, we would do well to regularly review that dimension of our work as well.

<sup>116</sup>Recall Maslow's findings that the psychologically healthiest people are dynamic, creative, but less attached to outcomes and other external factors than most people. MASLOW, MOTIVATION, *supra* note 10, at 160. He also found self-actualizers to seek responsibility, favor efficiency and good workmanship, and produce superior results. MASLOW, FARTHER REACHES, *supra* note 86, at 299.

<sup>117</sup>TAO TE CHING, *supra* note 104, at Verse 9.

<sup>118</sup>See Beck, *supra* note 4, at 5-6. See also Rick B. Allen, *Alcoholism, Drug Abuse and Lawyers: Are We Ready to Address the Denial?* 31 CREIGHTON L. REV. 265, 265-66 (1997); Eric Drogen, *Alcoholism in the Legal Profession: Psychological and Legal Perspectives and Interventions*, 15 L. & PSYCHOL. REV. 117 (1991). The common view that workaholism and perfectionism are common among lawyers is supported by the numerous passing references to these behaviors in the literature. For specific comments, see Daicoff, *supra* note 1, at 1418.

<sup>119</sup>EDWARD J. KHANTZIAN, M.D. ET AL., ADDICTION AND THE VULNERABLE SELF XVI, 3, 12 (1990); see also LEVIN, *supra* note 90, at 4, 5, 12, 14, 229-32; ALCOHOLICS ANONYMOUS



of self.<sup>121</sup> The qualities of addiction manifestly relate to the "lower" needs in the human hierarchy. Addictions (other than workaholism) generally create increasing challenges to the addict's competency, respect, security, and in severe cases, survival needs. A graphically useful way to understand any addictive process is to think of it as moving the individual away from fulfillment and essentially downward on the hierarchy of needs, away from self-connection, self-esteem, and self-expression.<sup>122</sup>

Addiction theory points up intense similarities between addictive personalities and the less laudable qualities commonly associated with lawyers and law students. Psychologist Jerome Levin describes alcoholism as an immature state of development characterized by grandiosity, arrogance, isolation, unrealistic goals, excessive need for control, low tolerance for feelings and emotions ("affect"), massive anxiety, "empty" depression, and inability to access internal resources, resulting in excessive dependence on external factors ("field dependence").<sup>123</sup> Another theorist/therapist, Craig Nakken, emphasizes that addicts lack the capacity for emotional intimacy with themselves and others, and consequently form their primary relationships with "objects and events and not with other people" in order to control their feelings; all of which results in relating to themselves and others as "one-dimensional objects", in excessive levels of stress, and in likely eventual breakdown.<sup>124</sup> Perhaps of immediate relevance for legal educators, Nakken also notes that "shaming (family) environments", which he states may be identified in part by

---

64 (3d ed. 1976); ANONYMOUS, *COURAGE TO CHANGE* 9, 44, 80, 107, 118, 130, 311 (1992) [hereinafter ANONYMOUS, *COURAGE*]; ROBINSON, *supra* note 63, at 61.

<sup>120</sup>LEVIN, *supra* note 90, at 232; *see also* CRAIG NAKKEN, *THE ADDICTIVE PERSONALITY* 26, 55 (2d ed. 1996); ALCOHOLICS ANONYMOUS, *supra* note 119, at 67, 84, 560; ANONYMOUS, *COURAGE*, *supra* note 119, at 10, 150, 172, 265, 305.

<sup>121</sup>Definitions of *addiction* are often stated to include the suppression of feelings. SCHAEF, *supra* note 55 at 18; *see also* NAKKEN, *supra* note 120, at 11, 12. Webster's dictionary defines the verb *addict* as "the giving up of one's self." WEBSTER'S NEW WORLD DICTIONARY 16 (2d ed. 1980). *See also* LEVIN, *supra* note 90, at 232; NAKKEN, *supra* note 120, at 7, 8, 16, 17, 21, 23; KHANTZIAN, *supra* note 119, at xvi, 3; ANONYMOUS, *COURAGE*, *supra* note 119, at 24, 125, 132, 152.

<sup>122</sup>Some developmental psychologists base their approaches to addiction on their observations that addicts are either "fixated" or "regressed" to early stages of development. Termed the "archaic self" and "pathological narcissism", such fixation results, *inter alia*, in lack of self esteem, low tolerance for feelings and emotions, anxiety, and excessive dependence on the external environment. LEVIN, *supra* note 90 at 13, 14, 229-35. Apparent confirmation may be found in the published research on at least one self-improvement program, which produces measurable development toward self-actualization and simultaneously decreases addictions. *See* Charles N. Alexander et al., *Treating and Preventing Alcohol, Nicotine, and Drug Abuse through Transcendental Meditation: A Review and Statistical Meta-analysis*, *ALCOHOLISM TREATMENT QUARTERLY* 11:13-87, (1994); *supra* note 86 and accompanying text.

<sup>123</sup>LEVIN, *supra* note 90, at 13, 14, 229-35 (1987).

<sup>124</sup>NAKKEN, *supra* note 120, at 11-12 (2d ed. 1996).

pressure for academic or other forms of perfection, a sense that one is never doing quite well enough, and excessive sensitivity to mistakes, create "perfect candidates for addiction".<sup>125</sup>

The basic literature of the two oldest addiction recovery programs in the United States, Alcoholics Anonymous (A.A.) and Alanon Family Groups, make it clear that the internal processes of addiction can exist independent of manifested compulsive behaviors.<sup>126</sup> This fact should counsel vigilance among law teachers and bar leaders, particularly given the known incidence of addictions among lawyers and the evidence that law students tend to mask their distress.<sup>127</sup> Many law students and lawyers who are not exhibiting full-blown addictions may be experiencing or developing related internal dysfunctions.<sup>128</sup>

The same addiction recovery resources are equally on point concerning personality characteristics of addiction which are commonly seen among lawyers and law students. The A.A. literature discusses egotism and self-centeredness,<sup>129</sup> lack of self-esteem,<sup>130</sup> perfectionism,<sup>131</sup> excessive reactivity to events and other people,<sup>132</sup> and fear and anxiety.<sup>133</sup> Of pointed interest for law students and lawyers, one alcoholic defines her addiction as "a state of being in which the emotions have failed to grow to the stature of the intellect".<sup>134</sup>

---

<sup>125</sup>*Id.* at 115-17.

<sup>126</sup>ALCOHOLICS ANONYMOUS, *supra* note 119. The basic text of the A.A. program states that alcoholism is a mental, physical, and spiritual disease of which "liquor was but a symptom". *Id.* at 64; "[b]ottles were only a symbol of the problem." *Id.* at 103; and that alcoholics drink because they are unable to live comfortably in sobriety. *Id.* at 554. The basic principle of the Alanon program is that the non-addicts close to an addict become affected and often engage in an addictive process of their own involving low self-esteem, lack of self care, image-management, manipulation and control, compulsive behavior, and excessive sensitivity to and focus on others. ANONYMOUS, COURAGE, *supra* note 119.

<sup>127</sup>*See* Daicoff, *supra* note 1 at 1373-82.

<sup>128</sup>A recent study found that almost 70% of lawyers were likely to have an alcohol problem at some time during their career. Beck, *supra* note 4, at 13.

<sup>129</sup>ALCOHOLICS ANONYMOUS, *supra* note 119, at 61, 62, 64, 67, 534.

<sup>130</sup>*Id.* at 64.

<sup>131</sup>*Id.* at 449.

<sup>132</sup>*Id.* at 66, 125, 534.

<sup>133</sup>*Id.* at 67, 84, 560.

<sup>134</sup>ALCOHOLICS ANONYMOUS, *supra* note 119, at 61, 62, 64, 67, 535. This alcoholic also notes that s/he "had to be right all the time", and that, in place of mature emotions, s/he experienced "vanity, self-interest, false pride, jealousy, and longing for social approval". *Id.* at 534. These characteristics are stereotypical of many lawyers.

Screening literature for the Alanon program includes the following questions, which call to mind obvious characteristics of many lawyers and law students:

- "Do you have a need for perfection?"
- "Do you overextend yourself?"
- "Do you fear criticism?"
- "Do you constantly seek approval and affirmation?"
- "Do you often mistrust your own feelings and the feelings expressed by others?"
- "Do you find it difficult to identify and express your emotions?"<sup>135</sup>

Further, based on the common problems of Alanon members, its texts devote significant space to considerations of excessive need for control, the need for emotional distance without isolating one's self, accepting comfortably events and experiences external to one's self, focusing on one's personal processes rather than on other people, and managing excessive concern over the opinions of others.<sup>136</sup>

Given the apparent commonality among many lawyers and law students of issues basic to addiction theory and established addiction recovery programs, the elevated occurrence of recognized addictions among lawyers, and the many potentially dehumanizing tendencies attending the study and practice of law, it is hardly a stretch to propose that elements inherent to legal education and practice can combine to create an addictive process. It may, of course, also be that many persons with addictive traits or tendencies are attracted to the

---

<sup>135</sup> ANONYMOUS, *DID YOU GROW UP WITH A PROBLEM DRINKER?* (1984). Other screening questions which may pique the personal interest of some lawyers and law students: *Do you have trouble with intimate relationships? Have you had problems with your own compulsive behavior? Do you isolate yourself from other people? Do you feel that individuals and society in general are taking advantage of you?*

I use these questions with many distressed students, and although virtually all of them respond affirmatively to many of the questions, few can report that they have personal issues related to this particular recovery program—family or close friends who are alcoholics. I do not know whether the inability to relate is a function of denial of their family reality; but it is noteworthy that in *Work Addiction*, Bryan Robinson observes that workaholics are often children of alcoholics/dysfunctional families. ROBINSON, *supra* note 63, at 18, 19.

The screening questions and major issues addressed by this addiction recovery program leads one to consider whether many of us have dysfunctional family backgrounds (whatever that may actually mean), or whether the dynamics of working with the law, with perfectionistic lawyers, law teachers or law students, or with the troubled people in the legal system, creates processes strongly analogous to those of the alcoholic/addicted family. If either possibility is true, use of the material from this program, or development of a similar program specifically for law students and lawyers, may be helpful for many of the problems in the profession. *See also infra* notes 139 and 174 and accompanying text.

<sup>136</sup> ANONYMOUS, *COURAGE*, *supra* note 119; *see also* ANONYMOUS, *ONE DAY AT A TIME* (1989).

practice of law.<sup>137</sup> Regardless, acknowledging and confronting these tendencies empowers a lawyer or law student to contradict them, and maintain or restore a strong connection with the many subjective qualities of one's self.<sup>138</sup> Attorneys and law students are well-advised to remain alert for addictive tendencies in themselves, and to regularly notice, respect, and express<sup>139</sup> their feelings and personal values.

*J. The Self-Actualizing Lawyer: The Relationship Between Personal Satisfaction and Professionalism*

Although much of this discussion is focused on the many problems related to the profession, the situation is far from insoluble. In fact, law students and

---

<sup>137</sup>Recall however, the findings of rapidly increasing distress among students after beginning law school, and their relative normalcy before that point. See Beck, *supra* note 4, at 1; see also *supra* note 27 and accompanying text. Nakken also emphasizes that addictive processes create addictive personalities, and that the converse is not true. NAKKEN, *supra* note 120, at 24-26. This does not mean that people arriving at law schools have not already been subjected to the problematic social environments which Nakken describes. After all, many educational environments, from elementary school to high school, can also foster a sense of insecurity, competition, inadequacy, etc.—but it is cause for the careful attention of legal educators. I hear from many students, as undoubtedly do others, that students find the competition and pressure they experience in law school to be inimical to their sense of well-being, and to inhibit their ability to maintain balanced lives and supportive relationships with friends, families, and peers.

<sup>138</sup>I propose in my presentations for lawyers that the full range of faculties of one's person might include: ego (individuality); relationship to universality or higher order (humility); intuition (non-rational knowing); values (sense of right and wrong); intellect (discrimination and choice); feeling; mind (general thinking); senses; physical integration and capacity for action (health); and relationship to others and the environment. I suggest that attendees consider which, if any, of these faculties are ignored or discounted in their life, and that they take steps to revitalize their connection with those faculties regularly. The following footnote and Part III include initial thoughts on methods for maintaining vital connectedness with feelings, values, intuition, and humility, the faculties most likely to be ignored by lawyers and law students.

<sup>139</sup>One of the important ways for law students and lawyers to keep themselves balanced and well-connected internally is to find opportunities to openly express their personal values, feelings, and concerns. This can be done with friends, peers, colleagues, family, or others that one trusts, and needs to be done regularly. I would like to create attorney (and law student) health networks—essentially groups of peers that provide these opportunities for each other. Because of the elevated incidence of addictions among lawyers, and the potentially addictive (self-alienating) factors discernible in law study and practice, I would propose that such networks operate in a manner sufficiently similar to the model of the proven addiction support groups to prevent the development of addictions. I have discussed with members the dynamics of such groups for decades, since first observing as a prosecutor the particular value of the established programs (Alcoholics Anonymous, Narcotics Anonymous, and Alanon Family Groups) to improve domestic abuse situations. Members of such groups report that the group dynamics promote healthy self-esteem and self-care, mutual respect, patient listening, humility, and honest expression of feelings—all qualities that would benefit many attorneys and law students.



lawyers can make choices that will simultaneously enhance personal and professional life, because health, life satisfaction, and professionalism are closely linked.

Recall that, in addition to technical proficiency, the characteristics of professionalism are considered to include broad vision, integrity, commitment to values, leadership, respect for others, and commitment to service.<sup>140</sup> It is important to realize that all of these latter qualities develop with emotional maturity. Maslow found specifically the following traits in self-actualizing people: self-governance and individuality; universal, holistic thinking; superior awareness of truth and undistorted perception of reality; seeking good for others and mankind/service-orientation; and lack of concern for differences in class, race, or belief.<sup>141</sup> Particularly on point, Maslow observed self-actualizers to be "the most ethical of people".<sup>142</sup>

The related issue of life satisfaction is also addressed by Maslow's work. He found self-actualizers to be peaceful and unworried; accepting of imperfections; and experiencing a constant sense of good fortune, satisfaction, "overflowing abundance," and fresh appreciation.<sup>143</sup> The contrast between these experiences and the descriptions of less mature people, including motivation by deficiency<sup>144</sup> and satisfaction only in moments of episodic relief,<sup>145</sup> could hardly be more striking.

It appears to me that exalted professionalism and self-actualization largely describe the same level of mature life from different perspectives.<sup>146</sup> It makes

---

<sup>140</sup>See *supra* notes 67-70 and accompanying text.

<sup>141</sup>See MASLOW, MOTIVATION, *supra* note 10, at 153-72. The universally accepting attitudes symptomatic of psychological maturity apparently go beyond notions of tolerance. Maslow observed that self-actualizers found differences meaningless. *Id.* at 178-80. Awareness of this quality of maturity may also help people question and contradict their personal tendencies toward racism, classism, sexism, etc., and to recognize that such bias in others probably indicates a lack of maturity and genuine self esteem. See also SCHAEF, *supra* note 55, at 122-23 (1987).

<sup>142</sup>See MASLOW, MOTIVATION, *supra* note 10, at 168. Lawrence Kohlberg's classic delineation of moral development supports the thesis that high levels of professionalism will require lawyers to grow to the most mature levels of which humans are capable. Kohlberg's findings echo Maslow's sequence of need and motivation, in that growth in moral reasoning is also found to move from selfish, fearful and egoistic motivation to shared values and then to a mature state in which real individual autonomy and sensed universal principles coexist. LAWRENCE KOHLBERG, ESSAYS ON MORAL DEVELOPMENT, VOL. II; THE PSYCHOLOGY OF MORAL DEVELOPMENT, (1984), at xxix; 44-46; and L. Kohlberg & R. Ryncarz, *Beyond Justice Reasoning: Moral Development and Consideration of a Seventh Stage*, in HIGHER STAGES OF HUMAN DEVELOPMENT: PERSPECTIVES ON ADULT GROWTH, (Charles Alexander & Ellen Langer, eds.) 191-95 (1990).

<sup>143</sup>MASLOW, MOTIVATION, *supra* note 10, at 153-63.

<sup>144</sup>*Id.* at 162.

<sup>145</sup>*Id.* at 57.

<sup>146</sup>If this is true, it would also explain why attempts to teach morals (and probably efforts to improve the profession by focusing on proper behavior), meet with limited



sense that life satisfaction and high levels of professionalism should be experienced together, since qualities such as public-mindedness, clarity, compassion, and wisdom would naturally be expected to manifest largely in people who are mature, self-secure, and relatively fulfilled. In practice, I have not found an attorney (or anyone else for that matter) who is pompous, unkind, or dishonest but who reflects real satisfaction and contentment with his life.

Much of self-actualization theory, and much of what professionalism is about, proceeds from deep respect for one's self and for other people. The externalizing factors common to legal education and law practice tend to undermine one's capacity to respect many defining qualities of humanness. To the extent that we strengthen our genuine appreciation for the uniqueness and inherent value of humanity—our own and that of others, we will find that we are spontaneously relating to ourselves and others in more humane ways. We will find ourselves happier to that degree, and society at large will find us more appealing in the same measure.

#### IV. PART III: PRACTICAL USE OF THE MATERIAL

Genuine self-esteem and self-actualization require intimacy with one's feelings, values, and other subjective qualities. Since these experiences are foundational for life satisfaction and development of the qualities at the heart of professionalism,<sup>147</sup> improvement of the profession requires that law students and lawyers seek ways to strengthen these faculties within themselves. As part of our increasing focus on the profession, law teachers, bar leaders, and senior attorneys have a special responsibility to find ways to encourage and assist others in this regard.

---

success. Internal development is the more fundamental requirement, so that laudable behavior becomes a natural expression of one's self. One provocative direction for further consideration in this regard is study of the higher states of consciousness, commonly described in Eastern classics, and less commonly in Western literature. An example of the latter is RICHARD MAURICE BUCKE, *COSMIC CONSCIOUSNESS A STUDY IN THE EVOLUTION OF THE HUMAN MIND* (12th ed. 1946). Attainment of these states of consciousness is said to be closely linked to the subjective development of "self", to produce action for the good of the actor and of society, and to provide the experiences of joyfulness and contentment. BHAGAVAD-GITA, *supra* note 74, at Verses 3.19, 3.20, 6.5, 6.6, 6.21. Maslow's later work increasingly focused on persons exhibiting higher states of experience, which he termed "transcendence" and "being-cognition". MASLOW, *FARTHER REACHES*, *supra* note 86, at 249-55, 270, 283. A surprising and perhaps practical aspect of these discussions is alluded to both by Maslow and Maharishi Mahesh Yogi: that there is a particular state of physiological functioning that correlates to these subjective experiences. *Id.* See also BHAGAVAD-GITA, *supra* note 74, at Verses 4.29, 4.30, 4.38. Such considerations recall studies reporting many biological effects of the latter author's meditation technique. See *supra* note 86.

<sup>147</sup>The appendices to this article include diagrams suggesting the centrality of one's psychological maturity, personal integration, and sense of self to all of the primary problems facing the profession.

I have been pleased by the relative ease with which many law students and lawyers accept and begin to incorporate this information.<sup>148</sup> Just becoming aware of the principles discussed in this article is reported to help some significantly. In my experience, students respond positively and quite quickly when this information is espoused by a role model.<sup>149</sup>

Perhaps optimism is appropriate. After all, if this thinking is correct, it simply conveys encouragement to students and lawyers to become more fully themselves. Furthermore, it tells them that such development is likely to provide enhanced enjoyment of life, spontaneous professionalism, and significantly less stress than others are experiencing.<sup>150</sup>

### *A. Using the Material with Law Students*

#### 1. Current Applications—Simulation and Externship Perspectives

I currently have the luxury of working with my students for two semesters: first teaching a general lawyering skills course which involves regular simulation exercises, and then as faculty supervisor of an intensive litigation externship in the criminal justice system. As discussed earlier in this article, for the past few years I have presented the Part II material during my classroom semester, primarily to help students deal with their performance anxiety during the simulations. Because such anxiety manifests often, it provides many experientially relevant opportunities to briefly review the material. I believe this repetition in the context of simulated exercises is central to my early successes with students,<sup>151</sup> because it habituates them to apply these perspectives to their daily life experiences.

---

<sup>148</sup>Among attorneys this results, at least in part, from self-selection for seminars with titles like "Personal Satisfaction and Professional Excellence". Any student, however, who wishes to participate in the criminal prosecution or defense clinics at our college is obliged to take my course of instruction.

<sup>149</sup>While I am an experienced litigator teaching in a litigation program, I believe the impact on students would be at least equal, and perhaps greater, coming from faculty members teaching more traditional courses.

<sup>150</sup>As a securities fraud enforcement attorney I became professionally familiar with the truism that "if it seems too good to be true, it probably is." Nonetheless, all of the theory discussed in this article leads to the appealing conclusion that with clear priorities and greater maturity one will indeed have a better life overall. Maslow describes this phenomenon in self-actualizers, MASLOW, *FARTHER REACHES*, *supra* note 86, at 3-15; and the available research on the meditation technique referenced earlier strongly suggests that benefits from personal growth tend to occur synergistically and simultaneously on various levels of the person, rather than in isolation. See *supra* note 86.

<sup>151</sup>Recall the earlier discussion of the large number of students offering unsolicited comments about the value of this work. While I was writing this paper, a former student stopped in to see me, and volunteered: "[T]hat information is absolutely crucial as a law student. Otherwise, with the unfamiliarity and all the pressures of law school, as a student you just feel lost—you lose yourself." I often wish I had had such a perspective during my student and practice years, and a number of other law teachers, all with significant law practice experience, have expressed identical feelings. My student's

The lessons on lack of control and learning to thrive on good preparation and good motives also play out repeatedly for students during the classroom semester, generally in the contexts of anxiety during preparation and performance, and of losing simulated hearings or trials. The class also involves a great deal of discussion of these points as they relate to ethics-in-practice and the actual workings of the court system. The topics again come up regularly in discussions of professional relationships between adversaries, gaining respect of peers and judges, and the practical importance of one's professional reputation for integrity and honesty.

The written testing for the course has also recently covered this material. To this point a higher percentage of students (approaching 100%) have demonstrated a strong understanding of this unit than of any other unit.

These students subsequently engage in a high-credit externship with a prosecution or public defender office. The structure of the externship requires students to carry a significant caseload and handle their cases at all stages of the justice process. This results in an intense and realistic lawyering experience which is intended to provide the students with numerous opportunities to experience personally the stresses and uncertainties of active litigation practice.

The subject material is incorporated into the externship in a variety of ways. Students are required to submit daily reflective journals, and they are encouraged to include observations on these topics.<sup>152</sup> It is particularly encouraging to see students aggressively thinking for themselves and expressing their uniqueness, personal limits, and sense of rightness in their first real practice context. They are quick to praise that which they respect in the attorneys and judges they observe, and equally open to distinguishing that which they do not.<sup>153</sup> They commonly express such self-actualizing characteristics as: leadership, individualism, compassion and respect for others, respect for self over respect for appearance, democratic character structure, and a growing comfort with reality. They regularly discuss the skills and attitudes of their supervisors or other attorneys. Of particular relevance to the focus of this article, my students often contrast their own ideas, and their preferred styles and methods for lawyering, with that of those they observe, rather than simply modelling all that they see.

---

words bring to mind Dean Kronman's concept of the "lost lawyer". KRONMAN, *supra* note 29.

<sup>152</sup>Students are asked to write, *inter alia*, about "healthy, happy, sane, or sick" attitudes and behaviors which they observe in attorneys, judges, and themselves.

<sup>153</sup>While recognizing many of the particular challenges of the externship clinical model, I find this to be an outstanding strength—that students have a completely "real-world" practice setting, with strictly "real-world" supervising attorneys, and at the same time have a demanding faculty supervisor who requires critical reflection rather than simple modeling. Students have the opportunity to learn to harmonize with others and yet maintain their individual sense of rightness and decency. Despite the sense of vulnerability which must accompany a first practice placement, students have at times differed with supervisors to the extent of declining to continue on a case in which they were directed toward actions inconsistent with their conscience.

Students also frequently express their character and conscience at the workplace as well as in their reflections, even when it conflicts with their supervisors' preferences. Students often openly question the ethics and morality of their supervisors' decisions. One such student effected a systemic change in the sentencing practices of her supervising judge and his entire division, after withstanding criticism for her approach to prosecution for most of the semester.<sup>154</sup> A journal entry of this student emphasized the importance of personal conscience: "These lawyers think being tough is the important thing for a prosecutor. They make fun of me and call me 'the P.D.'. They're missing the boat. I know when something is wrong, and the fact that chance puts a defendant in this division and then gets him jail time for a minimum plea, unlike all the other divisions, is just plain wrong."<sup>155</sup>

A defender student states, "I strongly agree with what you say about Jiminy Cricket. I've seen that even when you have a firm grasp on the law and how you think it applies to your case, derived from cold legal analysis, there comes a point where a decision has to be made having nothing to do with legal principles or analysis. What is the right thing to do? To tell the client? To say to a juror or potential juror? Try to do IRAC on those questions and watch yourself fail miserably."

Other relevant topics commonly addressed by journal entries, with examples in parentheses, include:

- *Well-balanced attorneys and judges* ("The lawyers here seem to have figured out that killing themselves won't solve the crime situation this week. They're putting in their time and generally doing a good job, but it's all left behind at 5:00. I hope I can learn to stop fretting so much about the work. I think it's going to take a while.") I would suggest that this lesson applies equally to private practice since "killing one's self" for money, presumably to provide for a good life, is irrational.
- *Unbalanced attitudes of attorneys and judges* ("I couldn't run my life like the attorneys I see here. All they think about and talk about is work, work, work, even at lunch. My [relative] was a lawyer and he told me he was like that all his life, and looking back, he could see that he missed the most important things in his life. I don't want that to happen to me. If I couldn't enjoy my family and friends, it just wouldn't be worth it. I don't want to wake up one day like my [relative] and realize I missed out on my life.") Another student, describing his supervisor's critique in a trial

---

<sup>154</sup> Although law schools may not be able to reliably teach such character to one who is not so inclined, this should not justify us in disclaiming responsibility for the professionalism of our graduates. We should prefer to model, encourage, and recognize character when it is displayed, and require students to do the same to the extent that our teaching context permits.

<sup>155</sup> Journal entries are confidential. The examples given here closely paraphrase actual entries, and typify the content and style of those submitted without identifying the authors or others.



the student lost, stated, "I learned from him exactly how I *don't* want to think if I want to stay healthy in this work."

- *Egotism vs. self-esteem* ("This particular lawyer really bothers me. He has no idea what he's doing, but he's always talking about how great he is, and how 'his' intern is doing this or that for him. He's so irritating, I wish he'd either get transferred to another division or just grow up. I guess he's insecure, a good example of somebody who never 'made it' on Maslow's ladder. He pretends he never makes mistakes and always has excuses if he loses a case. Naturally, nobody likes him, which just makes things worse.")
- *The need for both a caring attitude and a sense of detachment from the problems of the client or victim.* Reaching for this balance often presents the greatest challenge for students. The progression of these entries can show striking development during the course of the semester. The initial idealism and emotional investment of the students generally tempers after some weeks of dealing with the same problems, and often the same people, and is further moderated by the demands of the increasing caseload. On the other hand, students are very clear to point out the damaging effects, to the overall system as well as the individuals, of judges or lawyers whom they see as becoming hardened to the point of no longer caring. The clearest reflections demonstrate that the students are engaging in the worthy struggle to maintain their caring attitude without becoming so emotionally invested that they rise and fall with the outcome of each case.
- *The value of recognizing what one realistically can and cannot control.* One of the first indications that students were benefitting from these perspectives came some years ago in a student's required self-evaluation of his trial performance. After analyzing the different portions of the proceeding, he concluded; "I lost the case but I feel good about what I did". Such entries are now commonplace, and students comment with this perspective on the many stressful occurrences that experienced lawyers commonly continue to be aggravated about, such as: angry, irrational and ungrateful clients, victims, or witnesses; judges ignoring the law or being rude; lawyers making clear misrepresentations in court; people in the system disliking or refusing to cooperate with the student or her supervisor; or the unpredictability of jury verdicts. Students are quick to point out when a lawyer or judge is unable to accept her lack of control. One student commented: "I can't believe X's reaction after that trial. You remember I told you about the bizarre verdict—I mean, he got the defendant to practically confess on the stand. He was so angry when the verdict came back that everyone could see it. He's been prosecuting for seven years—hasn't he ever lost before? And here we are, three weeks later, and he's still upset. He doesn't see that he did his job and that's all he can do. I can't see how he'll last very long if he keeps taking things so personally."

Journal entries are supplemented by additional reflective requirements during the semester. Specific sections of the Part II material are assigned as part of the midterm paper. The topic is also included for discussion in seminar meetings which take place ten times during the term. By the end of the



externship semester, it is my impression that a strong majority of the students have incorporated most of these perspectives into their thinking.<sup>156</sup> Of the relatively few who do not, most seem to simply lack interest. There are isolated others who are quite engaged intellectually in the material, but who do not seem able to practically benefit from it within the two semester period. Usually, in my estimation, this is because of their particularly entrenched insecurity, or a pronounced inability to see themselves objectively.

I have also presented this material to student groups not enrolled in my course or clinics, including one entire entering class. I receive frequent expressions of appreciation, but rarely have sufficient familiarity or continuing contact with the attendees to assess the actual benefit of the material. There is some sentiment that this material may be more meaningful to students after one semester of law school for experiential context.

## 2. Proposed Applications Across the Curriculum

It is to be hoped that law students will begin hearing these or similar humanizing perspectives throughout their educational experience.<sup>157</sup> We are unlikely to work meaningful change otherwise, except perhaps in immersion programs such as the one I am currently able to offer. Faculty offering clinical programs may directly incorporate some of the approaches described here,<sup>158</sup> as may those teaching skills simulations and other courses which produce visible anxiety or self-doubt in students.<sup>159</sup> The legal writing program required at most law schools offers one obvious opportunity. This program often serves as the student's unwelcome awakening to the potential stress of law school: her first requirement for production of a professional product, the common deflation after the first pointed critique of her writing, and the almost legendary anxiety around her first oral arguments. If students were provided healthy, balancing perspectives as part of these programs, or otherwise during the first year of law school, I believe significant benefits would accrue to many

---

<sup>156</sup>Because the reflective assignments are primarily based on personal experiences or direct observations of attorneys and judges, it is relatively easy to recognize those relatively few students who are simply reciting, rather than internalizing, the ideas. Even as a purely intellectual exercise, the bare understanding gained by those few may turn out to be helpful on reflection at another time in their careers.

<sup>157</sup>One thoughtful text written for this purpose is ELIZABETH DVORKIN, ET AL., *BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM* (West 1981) [hereinafter DVORKIN].

<sup>158</sup>I do not pretend to have anything like "The Answer" in any of this. I do hope that those teachers who are concerned about the problems discussed in this article will experiment with my ideas or those of their own invention and preference.

<sup>159</sup>As previously discussed, I would recommend introducing selected key portions of the material, including at least the hierarchy of needs, for basic understanding early in one's course or program, and then returning to it briefly to provide perspective when significant anxiety is demonstrated in the class.

individual students, and to the general learning and social environment of the college as well.

Integration of these perspectives into the traditional classroom<sup>160</sup> requires further consideration. The attitude of the teacher is probably the most important factor here (as well as the most difficult to amend because of its personal, subjective nature). It will be apparent to students whether their teachers genuinely respect them or not.<sup>161</sup> Further, many students are likely to internalize those attitudes, because of the respect and relative power typically enjoyed by faculty. It is relevant here to recall the evidence of distress or insecurity among law students, and the elevated interpersonal sensitivity found among lawyers.<sup>162</sup>

The teaching method is obviously also important. If we seek to graduate confident and balanced new lawyers, we need to be demanding without shaming, and to find ways to encourage creativity, self-reliance, and the expression of personal beliefs and values in our classrooms. In the context of the critical analysis of legal theory this may be no easy task, and the skill of rigorous legal analysis certainly must be taught to the point of mastery.<sup>163</sup> Changes in teaching style are possible, however, and modest amendments in this regard could produce significant improvements in the level of student engagement, enthusiasm, creativity, and self-regard. Teachers using the Socratic method can do so without conveying that there is only one right answer, known to the teacher and to be discovered by the student. More generally, we can all seek a bit of humility by recognizing, perhaps even explicitly in class, that we often learn from our students, and that there is more than one right way to address a problem or respond to a question.<sup>164</sup> Towards

---

<sup>160</sup>See generally Dvorkin, note 157, at 37-40, 37-40 and 56-57; Roger C. Cramton, *Beyond the Ordinary Religion*, 37 J. LEGAL EDUC. 509 (1987); Erwin N. Griswold, *Intellect and Spirit*, 81 HARV. L. REV. 292, 298-302, (1967) [hereinafter Griswold]; Paul N. Savoy, *Toward A New Politics of Legal Education*, 79 YALE L.J. 444, 448, 460-68, 481-83 (1970); Curtis J. Berger, *The Legal Profession's Need for a Human Commitment in DVORKIN*, *supra* note 157, at 33-34.

<sup>161</sup>In his spirited critique of legal education, Paul Savoy observes that the teaching process often revolves around the struggle for power and respect between teacher and student, with the teacher too often needing to come out the winner. Paul N. Savoy, *Toward a New Politics of Legal Education*, 79 YALE L.J. 444, 479-80 (1970).

<sup>162</sup>See *supra* notes 4, 5, 50 and accompanying text.

<sup>163</sup>The critiques cited above in note 160 do not suggest that the teaching of legal analysis is not important, and indeed most are explicit that this crucial skill not be minimized. DVORKIN, states that, "The goal of this perspective is not to replace the traditional strengths of the profession but to include them in a larger context. For example, the point is not that concern with human aspirations and values should replace technical mastery and analytic rigor. What is needed is a way of bringing together mastery with aspiration, intellect with experience, rigor with value, pragmatism with idealism, competence and skill with caring and a sense of meaning." DVORKIN, *supra* note 157, at 3. See also Griswold, *supra* note 160, at 297-300.

<sup>164</sup>I often find myself telling my classes that, while there are definitely some wrong ways to approach legal problems (generally by not preparing well, not consulting and considering obvious legal authority, and the like), there are often as many "right" ways

the end of one's classes, following the usual focus on legal issues and analysis, providing occasional opportunities for broader discussion can encourage student awareness of the more subjective values and faculties coexisting with their intellects, and serve to powerfully legitimize the continued exercise of those faculties. Such discussion might focus, for example, on the human impact of the topic, personal opinions about an "ideal" outcome, the feelings or personal conflicts one might have as a lawyer presented with a relevant dilemma, how one might deal with such feelings and conflicts, or how personal reactions to such considerations might affect students' career preferences.

*B. Using the Material with Attorneys—the Components of an Effective Approach*

I obviously do not have the same kind of supervisory relationship or continuing contact with attorneys that I have with my students. Assuming the material is sound theoretically, the potential for benefit to the attorneys (or students attending only isolated meetings) is therefore realistically limited. To date presentations to attorneys have consisted of a single meeting of two or three hours. The initial reaction of listeners is typically one of striking collective silence, which I imagine results from recognition of the sort of paradigm shift that digestion of the material requires for many of us. If the program is long enough to permit significant interaction, either through discussion or self-evaluation by the listeners, a number of supportive observations, anecdotes, and personal struggles around these issues are generally voiced. But, I believe my limited expectations for these meetings are realistic. Without continued exposure to this kind of thinking, people are not likely to actualize significant changes on the level that these ideas encourage: one's overall sense of self, connectedness with one's many subjective faculties, and one's fundamental attitudes and beliefs about life, work, and the world in context. At best I expect a single meeting to generate reflection on one's motivating assumptions about personal and professional life, and an interest in these or related ideas. In this regard they are probably effective.<sup>165</sup>

The more difficult question is that of continuing development for lawyers, and for law students who will not have regular contact with a committed mentor. Most law students and lawyers will have formidable inhibitions to the level of ongoing attention that this analysis suggests as necessary. We are in something of a "Catch-22" about this. Beyond the obvious pressures of time and economics, few of us will want to be perceived as needing help in such personal ways. Further, the precise nature of the problem from this viewpoint is the attorney's distaste or discomfort with his feelings, and disconnection from his

---

as there are lawyers with opinions. I have found this to be accurate as well as useful, both to underscore the importance of rigorous preparation and to encourage creativity and a self-expressive lawyering process.

<sup>165</sup>Feedback from these programs is consistently positive, but confirms the need for more exposure. The most common recommendation is for extension of the program to a half-day, or even a full day.

values and sense of self. Direct approaches to strengthening those faculties<sup>166</sup> require openly experiencing and exercising them, and are therefore unappealing to most lawyers and law students.<sup>167</sup>

My approach with students has been more or less comfortable for them, I believe, because it operates on the intellectual and sensory levels that law-trained individuals largely feel comfortable with. The material is integrated as a core component of a two-semester program which requires continuous observation, reflection and writing, combined with my role modelling and encouragement of open expression of the students' deeper beliefs, feelings, and preferences. This provides the kind of sustained focus which I believe necessary if one intends to meaningfully impact the more personal and subjective faculties through primarily intellectual activities.<sup>168</sup>

As discussed above, such consistent, internally focused effort is not likely to occur in practicing attorneys except in rare instances. I do encourage attendees to start a journal for self-reflection,<sup>169</sup> and to read related books or attend additional professional development programs. However, I consider it unlikely that many practicing attorneys, without support,<sup>170</sup> will engage in an intellectual program of self development with sufficient persistence to significantly impact the deeply subjective faculties discussed in this article. More attorneys are likely to engage in programs directed to externals—diet, exercise, and most "stress-management" techniques, which afford a greater sense of comfort and familiarity. But such programs, while unquestionably valuable, are not likely to impact significantly the deeper issues.<sup>171</sup>

---

<sup>166</sup>Examples of such subjectively-focussed programs might include peer or professional counseling, support groups, meditation, or sensitivity training.

<sup>167</sup>Personal development involves openness to change, which is commonly avoided because of the anxiety which often accompanies change. See Frank Haronian, *The Repression of the Sublime*, in DVORKIN, *supra* note 157, at 68-70. Every one knows the experience of discomfort when hidden qualities, whether feelings, talents, or anything else, seek to emerge.

<sup>168</sup>The description of the program as "primarily intellectual" is accurate in the sense that I do not incorporate direct approaches to the subjective human qualities such as those mentioned in footnote 166 above. At the same time, because of the experiential nature of the program as a combination of simulation and clinic, the requirement that students regularly address their "insides", and my efforts to model that behavior, the program undoubtedly evokes more recognition and expression of personal preferences, values and feelings than most law school offerings.

<sup>169</sup>See *supra* note 115 and accompanying text.

<sup>170</sup>"Isolation is a recognized problem among law students and lawyers." See generally Phyllis W. Beck J.D. & David Burns M.D., *Anxiety and Depression in Law Students: Cognitive Intervention*, 30 J. LEGAL. EDUC. 270 (1979).

<sup>171</sup>There are popular, largely analytical approaches to personal development, including those offered by author Stephen Covey. COVEY, *supra* note 21; COVEY, *FIRST THINGS FIRST*, *supra* note 56. Countless books and programs related to these issues may be investigated by one with interest.



Of the more direct approaches to developing these subjective qualities, professional counseling is clearly appropriate and crucial for persons who are depressed,<sup>172</sup> and can work well for many others if cost or concern for image do not make it excessively unattractive. However, because of such inhibiting considerations, I believe that larger numbers of individuals in the profession may be attracted to ongoing discussion groups among lawyer/law student peers, and/or individual self-development programs such as meditation or relaxation techniques.<sup>173</sup>

I have proposed "Attorney (and Law Student) Health Networks" as a means for people to regularly discuss these and other matters of concern to them. Potential benefits would include camaraderie of like-minded professionals; peer reinforcement to create a balanced and enjoyable life for one's self; an environment that encourages one to notice and express personal feelings and beliefs; and an enforced opportunity to listen respectfully to the feelings and beliefs of others, all on a regular basis.<sup>174</sup> Such a group can be very informal—an interested attorney or law student could fashion such a group from a few peers who are friends or professional associates.

Lawyers or law students who prefer a more individual approach to relaxation and to connecting well with one's sense of self may be attracted to a self-investigative program such as the meditation technique mentioned earlier.<sup>175</sup> There are many such programs available; I have referenced here only the program which has the greatest measure of scientific validation.

## V. CONCLUSION

There are many fundamental and troubling problems facing law students and lawyers, both individually and as a professional collective. I have suggested common sources for these problems, as a step toward developing solutions and as support for proposed tenets of healthy and professional life as a law student or lawyer. Aspects of psychology and addiction theory explain and relate the distress, dissatisfaction and addictions common within the

---

<sup>172</sup>Lawyers have a very high rate of suicide. According to a survey of suicide records from 1979-1988, lawyers rank fifth among all occupational groups. Interview with Carol A. Burnet, National Institute for Occupational Safety and Health, in Cincinnati, Ohio (Aug. 11, 1998).

<sup>173</sup>I would not encourage law students or attorneys to exclusively use individual approaches, as this may reinforce tendencies to isolate from others or avoid asking for help when needed. See Beck, *supra* note 170; Daicoff, *supra* note 1.

<sup>174</sup>Assuming the purposes discussed in this article, effectiveness would depend on group agreement to guidelines for interaction that encourage the exercise of the disfavored faculties of lawyers—particularly non-judgmental, non-critical listening and open expression of one's personal feelings around topics relevant to personal life quality, stress, balance, etc. The negative potential for advising, debating, and exercise of other *developed* lawyering abilities probably needs to be recognized and explicitly addressed. See also *supra* notes 135-138 and accompanying text.

<sup>175</sup>See *supra* notes 86, 122.



profession, and raise the distinct possibility that legal education and law practice encourage addictive processes in a variety of ways. I conclude that solutions internal to the individual are required, with particular focus on encouraging development of psychological maturity and strengthening intimacy with the more abstract, subjective human faculties. Instructing committed law students in these theories, and requiring an ongoing reflective process of the students during a simulation course and a clinical experience, has shown initial success. The manifest problems in the profession point up the importance of expanding such efforts in legal education, finding ways to simulate this experience for practicing attorneys, and investigating or developing more direct subjective approaches which are both effective and attractive to lawyers and law students.

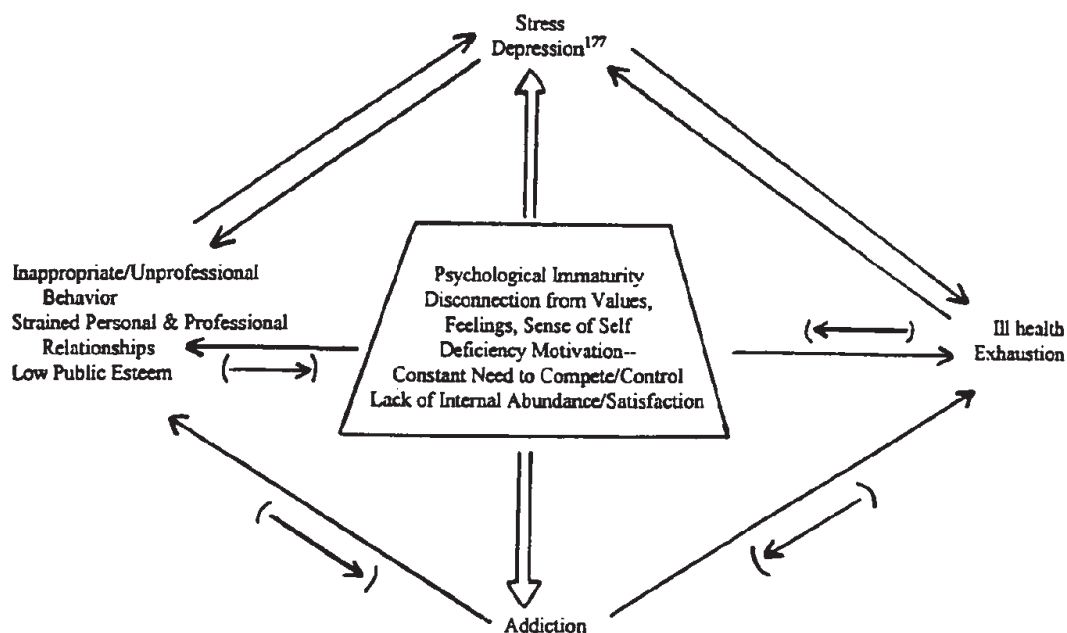
While professing hope for change within the practice community, one must recognize that lawyers' lifestyles, and ways of thinking and being, become increasingly ingrained over time. In comparison, law students arrive at our colleges fresh and alive with their energy and ideals. It is time that law teachers openly recognize the struggles of our graduates,<sup>176</sup> and seek ways to impart to our students that which they will really need to know to fully thrive as professionals.

---

<sup>176</sup>While legal education obviously provides the primary preparation for aspiring lawyers, I see no cause for blame among us. If the thesis of this paper is correct, we have basically been passing on to our students the information, attitudes and assumptions which we were provided as students. It is my hope, however, that the problems within the profession now suffice to demonstrate the need for change, and provide us the will to begin that task with institutional commitment and within our own teaching contexts.

## APPENDIX 1

Attorney Stress, Dissatisfaction, and Lack of Professionalism  
The Central Role of Disconnectedness from One's Sense of Self

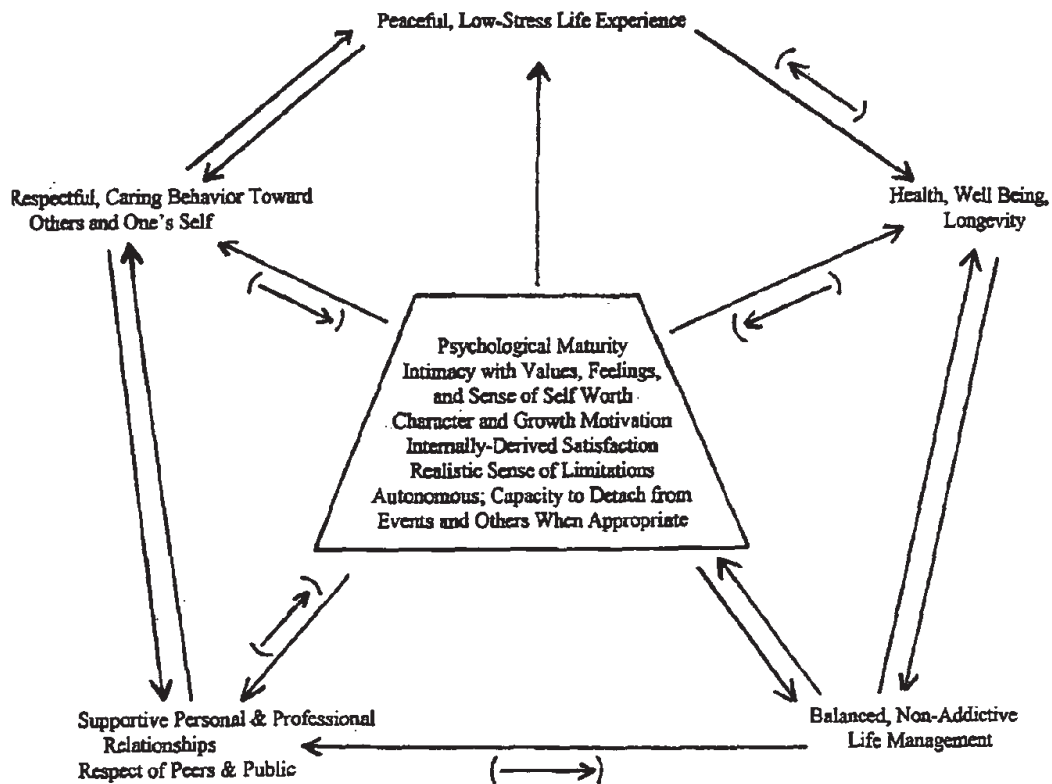


According to this model, failure of self-development is the primary source of attorney distress in all its forms. The relationships as diagrammed are not intended to be exhaustive. Arrows indicate interrelated influences; those in parentheses are considered secondary.

<sup>177</sup>High stress levels are perhaps the primary predictor of clinical depression. See W. Eaton, et al., *supra* note 4. See also Benjamin, et al., *supra* note 1, at 226.

## APPENDIX 2

## Professionalism and Personal Fulfillment



According to this model, improving any aspect of one's life will impact other aspects. However, input at the level of one's psychological development and connection with her sense of self is foundational to all of the other concerns.